

VOLUME III  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA

vs.

5:11-CR-602

JOSEPH VINCENT JENKINS,

Defendant.

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Transcript of a Jury Trial held on February 5,  
2014, at the James Hanley Federal Building, 100  
South Clinton Street, Syracuse, New York, the  
HONORABLE GLENN T. SUDDABY, United States District  
Judge, Presiding.

A P P E A R A N C E S

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## I N D E X     O F     T E S T I M O N Y

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Brian Braisted	412	497	524	--
Chad Willard, recalled	530	533	--	--
Joshua Findley	537	542	543	--
Christopher McClellan	545	--	--	--
Justin Myers	548	--	--	--
Michael Wojeski	552	561	--	--
Joseph Vincent Jenkins	577	608	--	--

1 (Open Court, Jury Out, 9:08 a.m.)

2 THE COURT: Good morning. We're in the courtroom  
3 outside the presence of the jury. Are you all set, your  
4 witness make it back or did he stay or whatever?

5 MS. THOMSON: He traveled back from Buffalo this  
6 morning.

7 THE COURT: Good for him. You ready to go? We've  
8 got all our jurors so we'll go ahead and get started.

9 (Jury Present, 9:09 a.m.)

10 THE COURT: Okay. The record should reflect that  
11 we have our complete group of hardy jurors that had no issue  
12 this morning, right? Little slippery maybe, but not bad.  
13 I'm glad to see that you all got here safe. We were on  
14 direct examination and we'll continue with the government's  
15 examination. Go ahead.

16 MS. THOMSON: Thank you, your Honor. At this time  
17 I'm going to approach the witness with what has been received  
18 into evidence as Government's Exhibit 3B.

19

20 B R I A N B R A I S T E D , recalled as  
21 a witness and being previously duly sworn, testifies  
22 as follows:

23 CONTINUED DIRECT EXAMINATION BY MS. THOMSON:

24 Q Agent Braisted, since we've had a break since the  
25 beginning of your testimony I just would like to cover a few

1 things before we start looking at Exhibit 3B. I believe  
2 yesterday during your testimony you identified that you as  
3 part of your examination computed hash values for the items  
4 that you examined, is that correct?

5 A Correct.

6 Q So if I understand when you made the image of the items  
7 that were in evidence, you computed the hash values of each  
8 of the image and video file that you found on the Toshiba and  
9 all the other electronic media, is that right?

10 A Well, initially when I image it, I create a hash value  
11 of the totality of the hard drive, the thumb drive, and the  
12 totality of the image created. So those hash values are just  
13 for the overall products. Then when I process the evidence,  
14 the image file within FTK or in EnCase, those two programs  
15 actually create a hash value for each individual file within  
16 there.

17 Q And so when you have that hash value, do you do a  
18 comparison of the image that you created against the original  
19 evidence?

20 A Yes.

21 Q And what was that, what did that comparison result in?

22 A It showed that the image was a bit-for-bit copy of the  
23 original evidence.

24 Q Did you also have the opportunity with the Toshiba  
25 laptop to do a hash comparison to the image that the

1 Canadians made of the Toshiba?

2 A Yes.

3 Q And what was that hash comparison result?

4 A Again, the hashes were identical indicating that my  
5 image copy was the same as their image copy, the same as the  
6 original evidence.

7 Q Now as we were talking about the Toshiba, if we could  
8 discuss the Toshiba at length. If we could look at  
9 Exhibit 3B, please. Can you tell me if you recognize page 1  
10 of 3B.

11 A Yes, I do.

12 Q What is that?

13 A This is a screen shot of the desktop for the user  
14 account Joe on the Toshiba laptop.

15 Q How do you know it's the user account Joe?

16 A When I first booted up the system, it goes through, you  
17 see the Windows booting up, go through a splash screen for  
18 Windows and then once the program is totally booted up you'll  
19 have a blue page and you'll have a little icon for each user  
20 account that's installed on the computer, and in this case  
21 there was a single icon, and it was labeled underneath it Joe  
22 so that was the only user account on this computer.

23 Q So if I understand page 1, Exhibit 3B, this is what the  
24 computer looked like when it's powered up?

25 A Once you click on the user account, Joe, it opens up to

1 this desktop page.

2 Q The items that are located on here, particularly in the  
3 rows on the left-hand side, is there a word for those little  
4 picture images?

5 A They're called icons.

6 Q How do icons get on a desktop?

7 A Some icons are created at the time of the program, or  
8 the operating system is installed. For example, up in the  
9 very top left, you see Recycle Bin, that's a  
10 Windows-installed icon. Some of the icons are installed by  
11 the user, for example, New Folder 2, 2 MB, these were folders  
12 that were created on the desktop at a later date. Then there  
13 are also icons that are created by programs installed on the  
14 computer.

15 Q You indicated that a user can add icons to their  
16 desktop; how does that happen?

17 A Just by moving your curser anywhere on the desktop and  
18 right click and you'll get a little box opening up, give you  
19 some choices and one of the choices will be to create a  
20 folder.

21 Q You mentioned there are some that are added as a result  
22 of -- is it internet activity?

23 A Internet activity.

24 Q Right. Can you give some examples of some icons that  
25 are on here that would show internet activity?

1 A Well, they don't really show internet activity. I can  
2 specify the icons, I pointed out Recycle Bin would be an icon  
3 that's created automatically by the operating system, there's  
4 several here, see if I can -- if I touch the screen I don't  
5 know if it will bring it up to the jury, but up along the top  
6 rows you'll see Toshiba, Toshiba offers, underneath that  
7 Toshiba registration, so those are all icons that were loaded  
8 in the operating system bundled with the operating system and  
9 when the operating system was installed, they were  
10 automatically put on this desktop.

11 Q And if we could see page 2, please. Looking at page 2,  
12 do you see an icon that you've already described as New  
13 Folder 2?

14 A Yes, right in the center of this screen shot.

15 Q Now is New Folder 2 an icon that was there at setup or  
16 was that added by a user?

17 A That would be added by a user.

18 Q And did you examine the contents of New Folder 2?

19 A Yes, I did.

20 Q Were you able to establish when New Folder 2 was added  
21 to the desktop?

22 A As I recall New Folder 2 was created on January 19th,  
23 2009.

24 Q Is New Folder 2 visible to any user of the desktop?

25 A Yes.

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1 Q And forensically, is that significant to you?

2 A It is because it means that anyone who uses this  
3 computer would have ready knowledge and access to that  
4 folder.

5 Q Knowledge and that it's visible?

6 A Absolutely.

7 Q So when you're looking at it, you can see New Folder 2?

8 A Right.

9 Q And if we could see page 3, please. Looking at page 3,  
10 can you tell us what that is?

11 A Yes, if you look at the very top of the screen, this is  
12 Windows Explorer view and it shows that this is the contents  
13 of New Folder 2, and within New Folder 2 you'll see that  
14 there's four subfolders labeled Homework, New Folder 98, Zoe,  
15 and New Folder, and in addition to these folders is also 33  
16 video files, they're spread throughout this page, Blue System  
17 Laila, there's a number of video files in here, and when I  
18 opened up Homework, New Folder 98, Zoe, and New Folder, I  
19 found additional video files. So in total within this  
20 New Folder 2, there were 55 video files contained on the  
21 computer.

22 Q If we could look at the first row, over towards the  
23 end, the third icon from the right, I'm looking at the screen  
24 now and it indicates four files, and the two middle ones, the  
25 names KP432 Bate 215 and KP432 Bate 15, are those videos that



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1 are contained on this desktop saved in New Folder 2?

2 A Yes, they are.

3 Q And the screen that we're looking at, page 3, is that  
4 the screen of what you see when you click on New Folder 2?

5 A Yes, it is.

6 Q And if we could go to page 4, please. Can you tell us  
7 what page 4 is?

8 A One of the folders, subfolders contained in New Folder  
9 2 is a folder created by the user and named Zoe and when you  
10 open up the Zoe folder, you'll see that there's 10 video  
11 files all with the word Zoe in them and I viewed those files.  
12 Each one of them depicts the same girl, presumably named Zoe,  
13 or at least that's the name she's using on these, in these  
14 videos, and four of them were categorized as child  
15 pornography.

16 Q And if we could blow it up a little bit so that you can  
17 see the titles of each of these files and you can tell us  
18 what the titles are?

19 A From left to right the file titles, and these are  
20 descriptive of what was found in the videos, the first one is  
21 Zoe Down Top, and two are Zoe pj1 and pjs2, Zoe First Ever  
22 Bate Part 1, Zoe's First Ever Bate Part 2 --

23 Q Let me stop you for a moment. You've reviewed these  
24 video files?

25 A Yes.

1 Q And with regard to Zoe's First Ever Bate and First Ever  
2 Bate Part 2, what is depicted in the files?

3 A It -- the girl starts out clothed and through the video  
4 she takes her clothes off and then she masturbates for the  
5 video.

6 Q Is that what you understood bate to refer to?

7 A Exactly.

8 Q Have you seen bate shortened in that capacity before in  
9 your examinations of child pornography?

10 A It's not unusual, yes.

11 Q If we could continue on with the icons.

12 A There's Zoe Show, Zoe Show 2, Zoe Tit Flash, Zoe Tits  
13 Arse 2, and Zoe Tits Vag.

14 Q And if we could see page 5, please. And if I  
15 understand correctly, page 5 is what the computer looks like  
16 when you turn it on?

17 A That's the desktop, yes.

18 Q Did you find in your examination any evidence of any  
19 type of file wiping software installed?

20 A Yes, there's a file program named CCleaner and it's  
21 actually, there's a shortcut file to that right on the  
22 desktop.

23 Q And do you see that displayed in front of you?

24 A It is down to the lower left on the screen, it would be  
25 a big C and then underneath it says CCleaner.

1 Q What happens when you click on CCleaner?

2 A That launches the program.

3 Q If we could see page 6, please. Does this screen  
4 depict what you see when you click on the CCleaner program?

5 A Exactly, when the screen is opened you'll see a screen  
6 like this and you'll see up here there's two tabs, Windows  
7 and applications, and when I launched this program, the  
8 Windows tab was already open, and underneath the Windows tab  
9 there are file categories for Internet Explorer, Windows  
10 Explorer, and System and for each one of those file  
11 categories the user can designate by a check which files he  
12 wants to be wiped from the computer, and in this case the  
13 user indicated that he wanted all files created through  
14 Internet Explorer, that would be temporary internet files,  
15 cookies, history, recently typed URLs, URL is Uniform  
16 Resource Locator, that's basically the website, when you want  
17 to go to a website on the computer, you type a website into  
18 your, into your -- the search bar, and last download location  
19 and auto complete form history.

20 For Windows Explorer, he wanted recent  
21 documents deleted, under System he wanted the empty Recycle  
22 Bin, temporary files, et cetera. So once you check those  
23 blocks, if you go down to the bottom of the page you'll see  
24 over to the left of that, please, it says analyze, and when  
25 you click on analyze, CCleaner will search through the hard

1 drive for all files that fit these categories that are blue  
2 checked. And then it will give you a display within that  
3 open window, it will tell you all the files that it found  
4 that fit those categories, and how much space they take up on  
5 the computer. And then if you go to the very bottom right,  
6 where it says run cleaner, when you click that button, then  
7 the program starts to wipe all of the files that fit those  
8 categories.

9 Q Did the presence of the CCleaner have any significance  
10 to you in your forensic examination?

11 A It deleted files that would indicate certain internet  
12 activity, yes.

13 Q And if we could see page 7, please, going again to the  
14 start page of the desktop, do you see an icon on that start  
15 page for 2 MB?

16 A Yes, down at the bottom, very bottom row.

17 Q Did you view the contents of 2 MB?

18 A Yes, I did.

19 Q And to view the contents, do you click on that icon?

20 A Just click on the icon and it will open up a window  
21 showing you the contents of the folder.

22 Q When you click on an icon such as 2 MB, and you do no  
23 more than click on it, you open it and view it and then close  
24 out of it, does that change the content of 2 MB?

25 A No, it does not.

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1 Q If we could look at page 8, please. Can you tell me  
2 what page 8 is?

3 A Page 8 shows that within the folder 2 MB there were 21  
4 subfolders, and each one has a unique name below the folder,  
5 these were all user-added folders within 2 MB.

6 Q And was 2 MB a user-added folder to the desktop?

7 A Yes, it was.

8 Q So within 2 MB there were also added folders?

9 A Exactly.

10 Q If we can just look at the first row, perhaps the first  
11 couple of files. Can you tell me just the names of the first  
12 couple files in 2 MB?

13 A They're labeled 6, ATV trip, and D Load.

14 Q The one that's labeled ATV Trip, ATV, is that shortened  
15 for all-terrain vehicle?

16 A Yes.

17 Q And if we could look at the second row as well, third  
18 from -- second from the right. You also see a trip ATV?

19 A Yes, I do.

20 Q And that was located in a folder on the 2 MB folder?

21 A Correct.

22 Q And if we could see page 9, please. Do you recognize  
23 page 9?

24 A Yes, one of the subfolders to the 2 MB folder is a  
25 folder labeled Estimates and when I opened the Estimates

1 folder, this is what I see. There's a long list of files  
2 within that folder, primarily text documents or spreadsheet  
3 documents.

4 Q Go ahead.

5 A One of the documents on there, I opened up, it says  
6 Ciccino's Service material quote and when I opened it, I see  
7 that there's a spreadsheet and in the top of the spreadsheet  
8 there's Jenkins Electric with a business address and a phone  
9 number and a fax number and it looks like it's a request for  
10 quote for electrical service, so it appeared to me that  
11 within this folder, Mr. Jenkins was storing business records.

12 Q Or the user of this computer was storing records?

13 A Yes.

14 Q And one of those records appears to be Jenkins  
15 Electric. Can you tell us what that address is?

16 A 4072 Dwyer Lane, Geneva, New York.

17 Q And that came from the -- I'm not sure how to say it,  
18 Ciccino's?

19 A Ciccino's Services material quote.

20 Q And that was located within the Estimates file in the  
21 2 MB folder?

22 A Yes.

23 Q If we could see page 10, please.

24 A This is another file that I opened within that  
25 Estimates folder, the file name is RR Info, and then you open

1 it, you'll see it opens in Notepad and the top of the Notepad  
2 shows RR info which I believe it's referring to Road Runner  
3 info.

4 Q Why do you think Road Runner?

5 A Well, I'm looking underneath there and there appear to  
6 be three e-mail addresses with rochester.rr.com which is the  
7 Road Runner e-mail, the way that Road Runner e-mail structure  
8 is.

9 Q And so within the Notepad folder, can you tell us the  
10 three e-mail addresses that you can see in Notepad?

11 A Yes, there's a gjenkins@rochester.rr.com. And then  
12 below that, jjenkins70@ and below that, jenkinsselectric@, and  
13 underneath each of those e-mail addresses appear to be  
14 passwords for each individual account.

15 Q Looking at the jenkinsselectric@, what's the item that  
16 you describe to be as something that appeared to be a  
17 password?

18 A Joseph70.

19 Q And if we could see page 11, please. Can you tell us  
20 what page 11 is?

21 A Page 11, this is another file I found within the  
22 Estimates folder, the file name itself is LNK, and when I  
23 opened up LNK it opens up in Notepad and it has some  
24 terminology in there that would indicate to me that this is  
25 designed for a user to be able to access websites that have

1 child pornography content.

2 Q Why?

3 A At the very top it reads, "Gateways Read All New  
4 Added." Underneath that, "Please remember some of our  
5 gateways. If the BBS is delete, you will find us using these  
6 gateways." And the term BBS stands for bulletin board  
7 system. Below that there is a web page, www.bbznnet.com, and  
8 to the far right of that there's a user and then this would  
9 be a password to get into that particular board, and the user  
10 password would be lollybbs. One of the most common terms in  
11 child pornography is Lolita, which refers to an underage  
12 female who's sexually attractive to some males, so Lolly  
13 would be an abbreviation of Lolita.

14 Q Have you seen in the forensic examinations you've done  
15 related to child pornography that term Lolly before?

16 A Yes, I have.

17 Q Looking at the first couple of entries where it says  
18 HTTP, could you tell us some of the entries at the end?

19 A Yes. These are all to one website called tymisk.com  
20 and then there's subfolders to that. One of them is Lillie  
21 Planet, below that would be mylollybbs and further down,  
22 yourloplace, those are all terms that I would say would  
23 indicate child pornography.

24 Q If we could look at page 12, please. Do you recognize  
25 page 12?



1 A Yes, I do.

2 Q What is page 12?

3 A Within the 2 MB folder, there's a subfolder called 6  
4 and this is the contents of folder 6, and it contains 10  
5 stickam videos. A stickam is a web camera that feeds  
6 directly into your computer and then can be fed into the  
7 internet. And each of these stickam videos depicts one or  
8 two females engaged in sexual activity.

9 Q Did you review each of the files that are shown?

10 A Yes, I did.

11 Q What are some of the names of these files?

12 A Stickam\_ Gina, stickam\_ Gretchy, stickam\_Nicole,  
13 stickam\_Rach, stickam\_Sammylove, stickam\_Shelb,  
14 stickam\_osexy, stickam\_Taylor15, stickam\_tragedy, and  
15 stickam\_xoKatieox.

16 Q If we could see page 13, please. Do you recognize  
17 page 13?

18 A Yes, I do.

19 Q What is page 13?

20 A Page 13 is the Favorites folder for the user account  
21 Joe.

22 Q What is a Favorites folder?

23 A A Favorites folder, it's created by the Vista operating  
24 system when a user account is created, and the Favorites  
25 folder is where all internet shortcuts or bookmarks for the

1 internet are stored for that particular user account.

2 Q And would that be user directed so that the user  
3 created that favorite?

4 A Well, the Favorites itself is created by the operating  
5 system, so there's a folder created as soon as a user account  
6 is installed, and then if you look at the top of this page,  
7 it shows there's some yellow boxes underneath the title name  
8 and for example Microsoft websites, and MSN websites, those  
9 would have been already stored in the operating system and  
10 created automatically when this Favorites folder was created.  
11 Then below that you'll see icons, those would all have been  
12 user-created icons.

13 Q So below the Windows Live items that are located there,  
14 the user would have taken an action to get them there?

15 A Exactly.

16 Q And do each of these Favorites below the Windows Live  
17 represent, if you click on them you would go to a website?

18 A If you're connected to the internet and you clicked on  
19 them, you would go to that particular website.

20 Q Do you see one referred to anonib stickam girls?

21 A Yes.

22 Q Could you read the full title of that?

23 A "Anonib stickam girls and cam whores."

24 Q And the one under that, please.

25 A "Anonibteensnorules."

1 Q And the one on -- directly under, below that. ATV?

2 A "ATV horsepower ratings."

3 Q Below that?

4 A "ATV 2007 Can-Am Outlander Max 800 HOEFIXT."

5 Q At the very bottom, second one from the bottom, can you  
6 tell us what that one is?

7 A Yes, that one will be relevant in a few slides,  
8 there's -- it's titled, "Elweb Lolita photos BBS gateways."

9 Q If we could see page 14, please. Can you tell us what  
10 page 14 is?

11 A Page 14 shows additional bookmarks that were located in  
12 the Favorites folder. There are some bookmarks that would be  
13 suggestive to me of child pornography, there's Great Lolita  
14 B, Great Lolita BBS, Great Lolita BBS with Chinese characters  
15 followed by freeforum.tw. TW would be indicative of Taiwan  
16 and then additional Chinese characters. Further down you'll  
17 see jailbait, underneath that, Lolitafix, below that, Lolita  
18 BBS.

19 Q And if we could see page 15, please. Can you tell us  
20 what page 15 is?

21 A Page 15 is what I see when I open the Joe Documents  
22 folder. In Documents is another file, it's another folder  
23 that's automatically created by the Vista operating system  
24 when a user account is created and that's where Microsoft  
25 recommends you store personal documents.

1 Q And did you see anything within page 15 that had  
2 forensic significance to you?

3 A Yes, down about two-thirds of the way down there's a  
4 Word document that's titled Links, l-i-n-k-s.

5 Q Did you view the Links file?

6 A Yes, I did.

7 Q And can you take a look at page 16, please. Do you  
8 recognize page 16?

9 A Yes. When I clicked on the Links file it opens up in  
10 Microsoft Word and at the very top it says L Web Lobbs, which  
11 is close to the bookmark which said L Web Lolita Photos  
12 Gateways BBS. And within this document further down, it  
13 shows gateways to include one of the top, extremetracking.com  
14 with a login of lobbsgtw, which I would take to be an  
15 abbreviation for Lolita bulletin board system gateway.

16 Q If we could see page 17, please. Do you recognize  
17 page 17?

18 A Page 17 is the photographs of the pictures, the graphic  
19 files that were contained within the Joe Pictures folder when  
20 I examined the computer.

21 Q When it indicates Joe Pictures, is Joe for the user on  
22 the desktop?

23 A User account.

24 Q And Pictures is the folder that would open up pictures  
25 that are stored in that folder?

Brian Braisted - Direct

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1 A Exactly.

2 Q What did you find when you opened up the Pictures  
3 folder?

4 A I found there were only seven pictures in there. Each  
5 one of them was received at the computer on May 23rd in the  
6 evening, roughly 10:10 at night, so close to the end of the  
7 evening before the computer was taken by the Canadians, and  
8 each picture depicts a young girl at a beach scene, basically  
9 an adolescent female at a beach.

10 Q And if we could see the next page, please, page 18. Do  
11 you recognize page 18?

12 A Yes, one of the files when I clicked it to enlarge,  
13 that's one of the pictures contained on the hard drive.

14 Q And were you able to determine the create date?

15 A It was May 23rd, 2009.

16 Q Do you know, recall a time?

17 A It was between 10:10 and 10:15 at night.

18 Q Were all of those pictures created around the same  
19 time?

20 A Yes, they were.

21 Q If we could see page 20, please. I'm sorry, I skipped.  
22 Page 19. Is page 19 what the user sees when they open up the  
23 user Joe?

24 A Exactly, this is the desktop again.

25 Q Within the desktop, is there an icon that can direct

1 you to mail, e-mail?

2 A There is, at the very top there is an icon, it says  
3 Windows Mail, it's a shortcut icon, and when you click it, it  
4 launches a Windows Mail program.

5 Q And if we could see now page 20. Is this what you see  
6 when you launch the Windows Mail?

7 A Yes, it is.

8 Q Could you tell us what's contained in Exhibit 3B,  
9 page 20?

10 A What happened, Windows Mail is a program offered by  
11 Vista and you can configure it to receive your e-mail  
12 content, you can designate multiple e-mail addresses,  
13 multiple e-mail accounts to handle your e-mails. So this  
14 page here shows the last e-mail that was accessed by the  
15 computer, it was dated 5/23/2009, and went to the jjenkins70  
16 e-mail address and it's addressed to Joseph, it confirms  
17 receipt of a payment to My Nationwide for \$99.95.

18 Q And that's addressed to Dear Joseph?

19 A Dear Joseph, yes. Now I think what's important here is  
20 you also see there's a Windows security box that pops up  
21 indicating that a person has to have a user name and password  
22 in order to receive these e-mails coming in.

23 Q And to also go in and look at the e-mails that are  
24 contained -- that are received to that e-mail address, would  
25 you need a password?

1 A You would have to have a password to receive them the  
2 first time. Once they're stored on the hard drive you can  
3 then look at them on your own.

4 Q And if we could see page 21, please. Is this what the  
5 user Joe, once you click on user Joe, what the desktop looks  
6 like?

7 A Yes.

8 Q And looking at page 21, do you see an icon that's  
9 called New Camera?

10 A Yes, on the very bottom, four rows from the left.

11 Q Would that be a preinstalled icon or would that be one  
12 that was added?

13 A That's added by the user.

14 Q Did you click on the New Camera?

15 A I did.

16 Q And when you clicked on it, can you tell us what  
17 happened?

18 A When I clicked on it, there's a number of pictures  
19 contained within that folder; one of those pictures was a  
20 picture of the defendant.

21 Q And can I see page 22, please. Was this the folder  
22 that you found, or the picture of the picture depicted, was  
23 that found in the New Pictures icon?

24 A In the New Camera icon?

25 Q New Camera icon.

1 A Yes.

2 Q So this picture was saved on the Toshiba laptop?

3 A Yes.

4 Q If we could see page 23, please. Do you recognize  
5 Exhibit 23 -- or page 23 of Exhibit 3B?

6 A Yes, I do.

7 Q What is that?

8 A This is a screen shot of the registry, Windows registry  
9 which maintains system settings for the computer, user  
10 settings, software settings. This particular page shows  
11 information that would have been received when the operating  
12 system was first installed, down near the middle of the page,  
13 when the operating system was installed, the user would be  
14 prompted to enter a register organization and in this case  
15 the user chose not to enter any information there. It would  
16 also be prompted to enter information for a registered owner  
17 and in this case the person entered the name Joe, J-o-e.

18 Q So a user for this Toshiba laptop would have had to  
19 enter the name Joe to have it become the registered owner?

20 A Exactly.

21 Q Can we see page 24, please. Can you tell us what  
22 page 24 is?

23 A Page 24 is -- it's a two-part, over on the left, that  
24 is the registry information for USB devices that were  
25 attached to the Toshiba laptop. You'll see the key, USB



1 store and I opened that and found that there were multiple  
2 USB devices that were attached to the computer at one time.  
3 Down near the very bottom, seven folders down, seven folders  
4 below the USB store it says disk and then PNY Prod USB 2.0.  
5 And I opened that folder below that and I found a folder  
6 that's labeled 6E741E120B3A. That would be the serial number  
7 for a USB device that was attached to the Toshiba computer.

8 Q Now when you say serial number, is there an external  
9 serial number on the thumb drives that you've examined in  
10 this case?

11 A No, there's not.

12 Q When you say serial number, where does that number come  
13 from?

14 A That serial number is hard coded into the device when  
15 it's made by the manufacturer.

16 Q So this particular serial number is not visible when  
17 you look at the thumb drive?

18 A Exactly.

19 Q But it's registered to the computer when it's mounted  
20 to the computer?

21 A The operating system is able to see the serial number  
22 that's encoded on the thumb drive.

23 Q And so if I understand your testimony correctly on the  
24 left-hand side of this exhibit, show that, the laptop that  
25 the thumb drive is mounted to will store information about

1     what devices were mounted into it?

2     A     Exactly.

3     Q     And so the Toshiba laptop, did it store that this  
4     particular thumb drive was mounted to it?

5     A     Yes, it did.

6     Q     Is that a thumb drive that you examined in the course  
7     of this investigation?

8     A     Yes, it is.

9     Q     Do you recall which gigabyte thumb drive?

10    A     That is the -- make sure here. That is the 4-gigabyte  
11    thumb drive.

12    Q     And if he could see page 25, please. Do you recognize  
13    page 25?

14    A     25 is again the same user key, same registry key from  
15    the Toshiba laptop computer and it shows that two files down,  
16    there's a disk and Prod USB flash memory with a serial number  
17    of 5B8506000016.

18    Q     And did you see that in any other place, that number?

19    A     Yes, that's the same serial number as the serial number  
20    for the 8-gigabyte thumb drive.

21    Q     So looking at, in total, page 24 and page 25, were you  
22    able to establish the two thumb drives that you examined as  
23    part of this investigation were connected to the Toshiba  
24    laptop?

25    A     Yes, I was.

1 Q Did you make a CD of the image files that you located  
2 of child pornography on the Toshiba laptop?

3 A Yes, I did.

4 Q At this time I'm showing you what's been previously  
5 marked as Government's Exhibit 3C. I'm going to ask you if  
6 you recognize what Exhibit 3C is.

7 A Yes.

8 Q What is Exhibit 3C, please?

9 A This is child pornography, I initialed and dated it  
10 yesterday when I reviewed it.

11 Q And are those images of child pornography?

12 A They're graphic files, yes.

13 Q Did you -- you initialed the CD indicating you reviewed  
14 it?

15 A Yes.

16 Q Were those images created from your forensic  
17 examination of the Toshiba laptop?

18 A Yes.

19 Q So that's a copy of the images that were located on the  
20 Toshiba laptop?

21 A Exactly.

22 Q And is that the images of child pornography?

23 A Yes, it is.

24 Q Is that CD a true and accurate copy of the images that  
25 you recovered on the Toshiba laptop?

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1 A Yes, it is.

2 MS. THOMSON: Your Honor, I would at this time move  
3 into evidence Government's Exhibit 3C.

4 MR. GOLDSMITH: Brief voir dire, your Honor?

5 THE COURT: Go ahead.

6 VOIR DIRE EXAMINATION BY MR. GOLDSMITH:

7 Q Agent Braisted?

8 A Yes, sir.

9 Q You created the CD, correct?

10 A I created a CD. The official CD was then created by  
11 the U.S. Attorney's office here.

12 Q Okay. The CD that you have in front of you, is that  
13 the CD that you created or that the U.S. Attorney's office  
14 created?

15 A That the U.S. Attorney's office created.

16 Q The CD that you created, when was the last time that  
17 you saw it?

18 A Friday.

19 Q Was it within your roles and responsibilities to take  
20 the custody of that CD within this investigation?

21 A No, I don't believe so.

22 Q After you created it -- withdrawn. From last Friday to  
23 the time that you created it, was it in your possession?

24 A This one here?

25 Q No, the one that you created.

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1 A The one that I created, no, I believe I had -- it  
2 remained with the U.S. Attorney's office.

3 Q Did you have the opportunity to create -- withdrawn.  
4 When was the last time you saw the CD that you created?

5 A Would have been last Friday.

6 Q Prior to last Friday, when was the last time you saw  
7 the CD that you created?

8 A I created it on Friday from my laptop computer with the  
9 contents of the FTK report.

10 Q All right. And were you present when the U.S.  
11 Attorney's office created the CD that is in front of you now?

12 A I was -- no, I gave it to them in one office, they went  
13 to another machine to create it.

14 Q Did you have the opportunity to compare the CD that you  
15 created with the CD that's in front of you?

16 A Yes.

17 Q All right. Are they the same or substantially the same  
18 condition?

19 A Yes, they are.

20 MR. GOLDSMITH: No objection.

21 THE COURT: It will be received.

22 MS. THOMSON: Your Honor, may we approach briefly.

23 THE COURT: You may.

24 (At Side Bar.)

25 MS. THOMSON: We had decided I would flag you when

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1 it was time for images and the time's here. What I intend to  
2 do is to have the witness look at a binder and then see if he  
3 recognizes those images and whatnot and then once they're  
4 received in evidence, I'll give a binder to each member of  
5 the jury.

6 THE COURT: Oh, so it won't be on the screens?

7 MS. THOMSON: We're not going to use screens for  
8 the images. We have to for videos, right now we'll be doing  
9 images and then switch to the videos. Before I switch to  
10 video, I will need to --

11 THE COURT: And we'll take a break at that point  
12 and get the jury out of the room, shut those videos off and  
13 get set so everybody knows where they're going to be standing  
14 to see what's going on, be all set.

15 MR. GOLDSMITH: Can I have a copy of the images.  
16 Okay.

17 (Open Court.)

18 THE COURT: Hold on for just a moment.

19 MS. THOMSON: Would it be okay if I grab the  
20 binders.

21 (Pause in Proceedings.)

22 MS. THOMSON: May I approach the witness?

23 THE COURT: You may.

24 CONTINUED DIRECT EXAMINATION BY MS. THOMSON:

25 Q At this time I'm showing you what's been previously

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1 marked as Government Exhibit 3D, 3E, and 3F. I'm going to  
2 ask you if you recognize each of those three exhibits.

3 A Yes, I do.

4 Q Can you tell us what those exhibits are?

5 A These are graphic files that I designated as child  
6 pornography that were contained on the Toshiba laptop.

7 Q Starting with Exhibit 3D, can you tell us what's on the  
8 front page of Exhibit 3D?

9 A On the front page is a file panel of where I found the  
10 image.

11 Q And what is on the reverse side?

12 A The picture itself.

13 Q Same question for 3E and 3F, what's on the front page?

14 A Again, the file path, where the file was located and  
15 where I found it on the Toshiba.

16 MS. THOMSON: Your Honor, at this time the  
17 government would move into evidence Exhibits 3D, 3E, and 3F.

18 THE COURT: Any objection or voir dire?

19 MR. GOLDSMITH: Briefly voir dire.

20 THE COURT: Go ahead.

21 VOIR DIRE EXAMINATION BY MR. GOLDSMITH:

22 Q Agent Braisted, file pathway on the front indicates a  
23 system volume information?

24 A Yes, sir.

25 Q Were these alive files on the computer?

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1 A They are contained as a compressed volume within system  
2 volume information.

3 Q So in other words, were these files that were readily  
4 accessible to the user?

5 A No.

6 MS. THOMSON: I'm going to object, that's not  
7 really the scope of a voir dire. It's certainly a subject he  
8 can talk about during his cross-examination.

9 THE COURT: During cross-examination, yes.

10 MR. GOLDSMITH: All right. I'll reserve for same,  
11 thank you.

12 THE COURT: Okay. Go ahead.

13 MS. THOMSON: Are they admitted, your Honor?

14 MR. GOLDSMITH: No objection under the  
15 circumstance.

16 THE COURT: Okay, received.

17 MS. THOMSON: At this time, your Honor, I will seek  
18 to publish the exhibits and I'll hand each juror a binder  
19 that contain the exhibits.

20 THE COURT: And we've established with defense  
21 counsel that each binder contains the same material, is that  
22 right, Mr. Goldsmith?

23 MR. GOLDSMITH: That is correct, your Honor.

24 THE COURT: Okay. You've had an opportunity to  
25 review those?



1 MR. GOLDSMITH: I have had the opportunity to  
2 review the set before me, I will take two moments to review  
3 the set that the U.S. Attorney's office has presented.

4 THE COURT: Is handing out to the jury, just so  
5 that you can be satisfied they're all being given the same  
6 exhibit.

7 MR. GOLDSMITH: I appreciate the same, your Honor.

8 (Pause in Proceedings.)

9 THE COURT: Ladies and gentlemen, I'm going to have  
10 the Assistant U.S. Attorney start passing out the binders.  
11 I'm going to ask you to just hold onto them until everybody  
12 has them and then you'll have an opportunity to review them.

13 MR. GOLDSMITH: Thank you, your Honor.

14 THE COURT: Mr. Goldsmith, you've had an  
15 opportunity to review each one of the binders that are being  
16 handed to the members of the jury?

17 MR. GOLDSMITH: I have had the opportunity to  
18 review them, they are consistent with what was discussed at  
19 side bar and the evidence being discussed currently with the  
20 witness.

21 THE COURT: Okay. And you're satisfied that  
22 they're all identical to the exhibits that have been admitted  
23 as 3D, 3E and 3F?

24 MR. GOLDSMITH: Upon my inspection, I am satisfied  
25 that they are the appropriate exhibits.

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1 THE COURT: Very well. You may publish, and ladies  
2 and gentlemen of the jury, you can now review those exhibits.

3 MS. THOMSON: Beginning with 3D, your Honor. Just  
4 so the court knows, there are other exhibits starting with 4,  
5 so the jury should not look at them until they are admitted.  
6 Only 3D, 3E, and 3F are admitted so if we could begin with  
7 3D.

8 THE COURT: Okay. Everybody hear that? We're  
9 going to end with 3D.

10 MS. THOMSON: 3F.

11 THE COURT: 3F.

12 MS. THOMSON: So what's been admitted as 3D, 3E,  
13 and 3F.

14 THE COURT: Just look at those, please, at this  
15 point.

16 CONTINUED DIRECT EXAMINATION BY MS. THOMSON:

17 Q Agent Braisted, if we could talk about Exhibit 3D,  
18 please. Were you able to determine where Exhibit 3D was  
19 located on the Toshiba laptop?

20 A Yes, it came from system volume information.

21 Q You did already once explain that but as it was  
22 yesterday, can you just give us a reminder what the system  
23 volume information is?

24 A System volume information is the place where the  
25 Windows operating system stores information that would be

1 used to restore the computer to a previous date. So  
2 contained within there are settings for the computer as well  
3 as backups of files and folders.

4 Q And Exhibit 3D, what does that depict?

5 A It's a prepubescent female sitting with her knees up  
6 and her legs spread, naked.

7 Q And if you could look at Exhibit 3E, please. Can you  
8 tell me, Exhibit 3E, where this particular image was located?

9 A 3E came from system volume information as well.

10 Q And looking at the image on the reverse side, can you  
11 tell us what's depicted in this image?

12 A It looks to be a prepubescent female bound with her  
13 hands and legs tied together, her legs spread and exposing  
14 her vagina.

15 Q And if we could look at Exhibit 3F, please, where did  
16 you locate 3F?

17 A 3F came from thumb cache on -- in the Windows operating  
18 system.

19 Q What is thumb cache?

20 A Thumb cache is when you have a folder containing video,  
21 picture, movie, an audio file and if you look at it in  
22 thumb's view, it will create a small thumbnail icon for that  
23 particular file, and that thumbnail icon is stored in thumb  
24 cache.

25 Q So for it to arrive there, what had to have happened?

1 A The file itself would have had to have been on the  
2 computer.

3 Q And if you could look at the image on reverse and tell  
4 me what's depicted in the image?

5 A It's two prepubescent females, looks like there's an  
6 object penetrating their vaginas.

7 Q And we're done with the binders just for the moment,  
8 you can set the binders down. As we're still talking about  
9 the laptop, the Toshiba laptop, did you find any other  
10 evidence of child pornography on the laptop besides graphic  
11 image files?

12 A I also found video files of child pornography.

13 Q Where did you find those video files?

14 A In New Folder 2 and in subfolders to New Folder 2.

15 Q Is that the folder that we looked at in Exhibit 3B?

16 A Yes.

17 Q And if we could have, please, page 3 of Exhibit 3B.  
18 Can you tell us what page 3 is again?

19 A Page 3 shows the video files that are contained within  
20 New Folder 2.

21 Q And those files, would they have arrived there because  
22 the user saved them there?

23 A Yes.

24 Q I'm now handing you what's been previously marked for  
25 identification purposes as Exhibit 3G and I'm going to ask

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1 you if you recognize Exhibit 3G.

2 A Yes, this is CD containing video files from the Toshiba  
3 laptop.

4 Q How do you recognize that CD?

5 A I reviewed it yesterday and I initialed and dated it.

6 Q Is that CD -- does that contain a true and accurate  
7 copy of the multimedia video files that you found on the  
8 Toshiba laptop?

9 A Yes, it does.

10 Q And you reviewed those video files to ensure that they  
11 were a true and accurate copy of the ones that you recovered  
12 from the Toshiba laptop?

13 A Yes.

14 MS. THOMSON: At this time, your Honor, we would  
15 move to admit Exhibit 3G.

16 MR. GOLDSMITH: Brief voir dire, your Honor?

17 THE COURT: You may.

18 VOIR DIRE EXAMINATION BY MR. GOLDSMITH:

19 Q Agent Braisted, did you create this particular CD that  
20 is in front of you?

21 A I did not.

22 Q U.S. Attorney's office create it?

23 A Exactly.

24 Q Did you, or rather, did they make a copy of one that  
25 you had created?

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1 A Yes.

2 Q Did you have the opportunity to compare the CD that you  
3 created with the CD that is directly in front of you?

4 A I did.

5 Q Were they the same or substantially the same?

6 A Yes, they were.

7 MR. GOLDSMITH: No objection.

8 THE COURT: It will be received.

9 MS. THOMSON: Your Honor, it would be that time.

10 THE COURT: It's your intention to show these  
11 videos?

12 MS. THOMSON: Yes.

13 THE COURT: Ladies and gentlemen, I'm going to give  
14 you a short morning break, about 5, 10 minutes, we're going  
15 to get the courtroom situated so we can show the video, and  
16 we'll get you right back out here. Please don't discuss the  
17 case. You can leave those binders right on your seat or on  
18 the rail, that's fine, and then we'll get you back out here.

19 (Jury Excused, 10:02 a.m.)

20 THE COURT: Anybody needs to use the facilities,  
21 Mr. Jenkins, whoever, let's do it now, including our witness,  
22 if you need to step down, that's fine. Ron, you're going to  
23 take care of these monitors, okay. And Mr. Goldsmith, before  
24 you go away, would you please consult with Mr. Jenkins and  
25 see if he wants to be in a position to be able to view these.

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1 MR. GOLDSMITH: No, he does not want to see them.

2 THE COURT: On the record. Mr. Jenkins, you have  
3 an absolute right to see all evidence that's being introduced  
4 and shown to this jury. You've had an opportunity to consult  
5 with your attorney, we can have you positioned in a place  
6 where you can view one of these screens as the evidence is  
7 being played. Is that something you want to do?

8 THE DEFENDANT: Just give me a minute.

9 MR. GOLDSMITH: Your Honor, he's decided he wants  
10 to think about it for another minute or two.

11 THE COURT: Okay that's fine, let us know after the  
12 break.

13 (Court in recess, 10:03 a.m. to 10:13 a.m.)

14 (Open Court, Jury Out.)

15 THE COURT: We're going to turn it towards the  
16 windows, he can slide around to the side of the table,  
17 exactly. Mr. Jenkins, that screen needs to be turned so it  
18 can't be seen by the gallery so you're going to have to move.  
19 I know there's no one there now, but if someone comes in, it  
20 has to be in a position where it can't be seen.

21 Okay, Mr. Goldsmith, you all set?

22 MR. GOLDSMITH: Yes, I'm fine.

23 THE COURT: Okay. And government's counsel, ready  
24 to go?

25 MS. THOMSON: Yes.

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1 THE COURT: Okay. Please bring the jury in.

2 (Jury Present.)

3 THE COURT: Okay. The record should reflect we  
4 have all the ladies and gentlemen of the jury after a break  
5 and we're prepared to go ahead.

6 Ms. Thomson, it's your intention to publish  
7 Exhibit 3G which contains video files, is that correct?

8 MS. THOMSON: Momentarily, your Honor. I do have  
9 the individual clips on 3H and the witness --

10 THE COURT: Okay, go ahead.

11 CONTINUED DIRECT EXAMINATION BY MS. THOMSON:

12 Q Agent Braisted, I'm handing you now what's been marked  
13 for identification purposes as 3H. Do you recognize  
14 Exhibit 3H?

15 A It's another disk with video files.

16 Q Agent Braisted, did you assist in compiling three  
17 videos off of Exhibit 3G which contain all of the multimedia  
18 files on the Toshiba to narrow them down to three which are  
19 contained on Exhibit 3H?

20 A Yes, I did.

21 Q Did you review the three videos that are on 3H?

22 A Yes.

23 Q Are these three videos that are contained on 3H true  
24 and accurate copies of what's on 3G?

25 A Yes, they are.



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1 Q And also what you found on the Toshiba laptop?

2 A Exactly.

3 MR. GOLDSMITH: No objection.

4 MS. THOMSON: Move to admit. It's received?

5 THE COURT: No objection, it will be received.

6 MS. THOMSON: At this time, your Honor, the  
7 government would move to publish what's been called clip 1 on  
8 Exhibit 3H.

9 THE COURT: Proceed.

10 MS. THOMSON: And your Honor, for the record, this  
11 clip, clip 1 is, and I discussed, informed the jury of this,  
12 with counsel, it's a video of 23 minutes in length and the  
13 government's playing only a portion of clip 1, only a few  
14 seconds portion, and that would be at 1401 to 1409.

15 THE COURT: Okay, Counsel, go ahead.

16 MS. THOMSON: Computer problems. Bear with us.

17 (A video clip was played from Government's  
18 Exhibit No. 3H.)

19 MS. THOMSON: If the record could reflect we have  
20 played that 8-second portion of the video for the court and  
21 for the jury.

22 Agent Braisted, did you review the entire video  
23 that was just shown portion of?

24 A Yes, I did.

25 Q Is that the video of KP\_Nancy 432 Bate 15?

1 A On the Toshiba it was KP\_432 Bate.

2 Q And was that the same file that was located in New  
3 Folder 2?

4 A Yes.

5 Q Did you watch the entirety of the video?

6 A I did.

7 Q And can you just briefly describe what happens in the  
8 video?

9 A It starts out, the girl is clothed, as the film  
10 progresses she takes her clothes off, she exposes herself,  
11 she displays her genitals, I believe she masturbates later on  
12 in the video.

13 MS. THOMSON: We're at this time, your Honor, going  
14 to play what's been identified as clip 2 from Exhibit 3H.

15 (A video clip was played from Government's  
16 Exhibit No. 3H.)

17 Q And for the record, the clip that was shown is of a  
18 17-minute-and-39-second-long video and the clip was shown  
19 from 9:55 to 10:12. Did you review the entire video?

20 A I did.

21 Q Can you just give us a general idea of what's on the  
22 video?

23 A Similar to the first, it's a young girl, she starts out  
24 in the video, she's fully clothed, she takes her clothes off,  
25 she displays herself for the video, she ends up masturbating

1 in the video as well.

2 Q And the name of that video, is that Sierra.avi?

3 A Yes.

4 Q Was that Sierra.avi also found in New Folder 2 on the  
5 Toshiba laptop?

6 A Yes, it is.

7 Q If we could see clip 3, please.

8 (A video clip was played from Government's  
9 Exhibit No. 3H.)

10 Q And for the record, the portion that was played of that  
11 video -- was this video in excess of three hours?

12 A Yes, it was.

13 Q And the portion that was played for the jury was at  
14 1:54:24 to 1:54:29. Did you watch the entire three hours?

15 A I clicked through it so I saw segments from beginning  
16 to end.

17 Q Could you tell us briefly what you saw when you were  
18 clicking through it?

19 A Appears to be a video taken at a girl's bedroom, at  
20 times there's no one in the display, at other times the girl  
21 shows up dressed, she undresses, then she does things to  
22 herself while naked, displaying herself to the video camera.

23 Q Each of these three videos, are they three videos that  
24 you identified as child pornography?

25 A Yes.

1 Q Did you do more than one examination in this case?

2 A Yes.

3 Q Of the media?

4 A Yes, I did.

5 Q Would you tell us a little bit about that?

6 A Well, my initial examination, once I received the items  
7 from the case agent, I brought them back to the lab, I  
8 created images and then I processed the images and worked off  
9 of those images. When I started my exam, the first thing I  
10 did was I went through the thumb drive devices. I found no  
11 evidence of child pornography on one of the thumb drives, the  
12 2-gigabyte thumb drive. The other two thumb drives had very  
13 large quantity of child pornography, both pictures and videos  
14 on them. It took me probably 10 days going through there to  
15 identify the child pornography and to bookmark it. At that  
16 point I started examining the Toshiba laptop and the Compaq  
17 laptop computers. My primary goal at that point was to  
18 establish that those computers were used to receive or  
19 otherwise transmit the information that was found on the  
20 thumb drives; in other words, that the computers had those  
21 images on them as well.

22 Q Did you also do an analysis to find out if you could  
23 see any other activity that was going on on the computer that  
24 was connected or in close proximity to child pornography  
25 presence on the computer?

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1 A Yes, I did.

2 Q At this time I'm handing you what's been marked as  
3 Government's Exhibit 3I. I'm going to ask you if you  
4 recognize 3I and if we could --

5 A Yes, I recognize it.

6 Q Is everyone's monitor on? Can we turn the monitors  
7 back on? We're not going to publish it yet but there will be  
8 a series of documents we're publishing.

9 THE COURT: The monitors are on. They should be.

10 Q Can you tell us what Exhibit 3I is?

11 A 3I is a screen shot of file activity on the Toshiba  
12 laptop, and it's -- it was sorted for date and time.

13 Q And is this a two-page document?

14 A Yes, it is.

15 Q What's on the second page?

16 A The second page is an e-mail that was a file that was  
17 created in close proximity to files that I looked at in the  
18 first page.

19 Q Exhibit 3I, is this information that you were able to  
20 extract from the Toshiba laptop --

21 A Yes, it is.

22 Q -- during your examination?

23 A Exactly.

24 MS. THOMSON: At this time, your Honor, I would  
25 move to admit Exhibit 3I.

1 THE COURT: Mr. Goldsmith, any objection or voir  
2 dire?

3 MR. GOLDSMITH: No objection.

4 THE COURT: It will be received.

5 Q If we could publish page 1, please. Can you please  
6 explain what's depicted on page 1?

7 A This is basically a snippet of a spreadsheet, the  
8 left-hand column would be a file name, the middle column  
9 would be a date and time that that file was created on the  
10 Toshiba laptop, and the column to the right would be the file  
11 path where that particular file was found, and what I did was  
12 I focused on a particular period of time, in this case at  
13 January 19th, 2009, beginning at 6:00 in the evening. The  
14 highlighted line shows that New Folder 2 was created to the  
15 desktop at that time, and immediately following that, the  
16 five files below that, 13.flv, 14, 15, 29, and 30.flv were  
17 all saved to that folder.

18 Now each of those, the .flv indicates that  
19 they're video files. I looked at those video files, I found  
20 that they were all video files of the same two females, ages  
21 approximately 10 to 12 years of age, was not child  
22 pornography, it was child erotica, they were dancing and  
23 gyrating to the camera, hugging each other, that kind of  
24 thing. When I played the videos it took about 32 and a half  
25 minutes to play them in their entirety from one video to

1 another, total up to 32 and a half minutes. And then 33  
2 minutes after the folder was created and these files were  
3 created, then an e-mail, was a long string and then .eml,  
4 that indicates an e-mail file was created on the laptop.

5 Q Is that reflected in the entry that's immediately below  
6 what's highlighted in yellow after 30.flv?

7 A Exactly.

8 Q So that denotes that an e-mail --

9 A That's a file, that's an e-mail file, exactly.

10 Q FLV, can you tell us if you are familiar with that  
11 extension?

12 A It's an extension, I believe these were Stickam videos  
13 but it's just a multimedia file extension.

14 Q So the entry immediately under 30.flv, that string,  
15 were you able to produce what was observed at that time?

16 A Yes, just by clicking on that file name, it launched  
17 the file.

18 Q And is that contained in page 2?

19 A Yes, it is.

20 Q If we could see page 2, please. Can you tell us what  
21 it is?

22 A So page 2, this is the e-mail that was created  
23 immediately following the child erotica videos, and it went  
24 to the Joe Jenkins -- I'm sorry, the  
25 jjenkins70@rochester.rr.com account. The common name for

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1 that account is indicated as Joe Jenkins and it's just an  
2 e-mail from Trailer Parts Super Store advertising some sales.

3 Q The entry on the first page, does that entry show that  
4 that's when this e-mail was accessed?

5 A Exactly, it was -- when it was actually created on the  
6 Toshiba was 6:33:52 p.m.

7 Q And to be created, does that mean that this e-mail was  
8 opened?

9 A That was when it was opened on the computer, yes.

10 Q So if I understand the totality of your testimony, the  
11 new folder was created at 6 p.m., there were five videos  
12 approximately 32 minutes and 21 seconds in length, and then  
13 at 33 minutes, we have this e-mail being accessed and opened?

14 A Exactly.

15 Q At this time, your Honor, I'm handing the witness  
16 what's been previously marked as Government's Exhibit 3J.  
17 I'm going to ask you if you recognize Exhibit 3J.

18 A Yes, I do.

19 Q What is Exhibit 3J?

20 A 3J is similar to what I described in 3I. 3J shows  
21 files that were created on the Toshiba laptop on  
22 January 20th, 2009 between 6:57 in the morning and 7:16 in  
23 the morning.

24 Q Does this document, or exhibit contain three pages?

25 A Yes, it does.



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1 Q Do you recognize each of the three pages?

2 A Yes, I do.

3 Q And did you produce these three pages from your  
4 examination of the Toshiba laptop?

5 A I did.

6 MS. THOMSON: Your Honor, at this time I would seek  
7 to admit Government Exhibit 3J.

8 THE COURT: Any objection or voir dire?

9 MR. GOLDSMITH: No objection.

10 THE COURT: It will be received.

11 Q If we could publish page 1, please. Can you tell us  
12 what page 1 shows?

13 A Page 1, the highlighted file, if you look at the file  
14 date and time, this is the beginning of the activity that I'm  
15 noting and it's a file named meekrab.mpg, mpg would indicate  
16 that it's a video file. I viewed it and found that  
17 meekrab.mpg contains child pornography. The video itself is  
18 roughly five and a half minutes in length. Shortly after  
19 that file was created on the computer, there's a file called  
20 start.txt and when I looked at the file path that indicates  
21 that that's a file that was created when the user accessed  
22 the IKEA home planner program that's installed on the  
23 computer. Then 12 minutes after that, an e-mail is created  
24 on the computer, long string with the extension .eml.

25 Q If we could see page 2, please, if you could explain

1     what page 2 is.

2     A     Page 2 is just a screen capture of the child  
3     pornography video file that I found labeled meekrab, this was  
4     taken a minute and seven seconds into the video and this  
5     shows the two adolescents who were contained within the  
6     video.

7     Q     And meekrab, that's on the New Folder 2?

8     A     Exactly.

9     Q     And if we could see page 3, please.

10    A     Page 3, that depicts the e-mail file that was created  
11    on the Toshiba laptop at 7:16, it's from a company  
12    generic.com and it's addressed to  
13    jenkinselectric@rochester.rr.com.

14    Q     The entry that's noted on Exhibit 3J, page 1, is that  
15    entry created when that e-mail for jjenkinselectric is  
16    opened, is accessed?

17    A     Exactly. Exactly.

18    Q     So that e-mail was opened at that time that you  
19    described?

20    A     Yes.

21    Q     And that's the jjenkinselectric@rochester.rr.com?

22    A     Right.

23    Q     I'm now handing you what's previously been marked as  
24    Government's Exhibit 3K and I'm going to ask you if you  
25    recognize Government Exhibit 3K.

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1 A Yes, I do.

2 Q Are those -- is it four pages that you're looking at?

3 A Yes, it is.

4 Q Those four pages, what are they?

5 A The first page is similar to the previous ones, I'm  
6 looking at file activity on Toshiba laptop on January 24th,  
7 2009, at approximately 11:49 a.m. When I looked at that, I  
8 found an e-mail was created to -- on that, at that time and  
9 date, it was to the jjenkins70@rochester.rr.com account.

10 Q Are each of the pages that are depicted in Exhibit 3K  
11 pages that you recovered from the Toshiba laptop?

12 A Page 1 was from the Toshiba, page 2 is from the  
13 8-gigabyte thumb drive, page 3 is from the 8-gigabyte thumb  
14 drive, and page 4 is back from the Toshiba.

15 Q Did you create each of the images that are depicted in  
16 pages 1 through 4?

17 A Yes, I did.

18 MS. THOMSON: At this time, your Honor, I would  
19 offer in evidence Government Exhibit 3K, pages 1 through 4.

20 MR. GOLDSMITH: No objection.

21 THE COURT: Received.

22 Q If we could publish page 1, please. Please tell us  
23 what's depicted on page 1.

24 A Page 1, if you look at the -- that pane there, there is  
25 a file 183917, and then the file name is 02CF2392.eml and

1 that's an e-mail file that was created on the Toshiba laptop  
2 on January 24th, 2009, at 11:49 a.m. And if you look at the  
3 lower pane, it shows the contents of that e-mail, and it's an  
4 e-mail that was opened from the jjenkins70@rochester.rr.com  
5 account, it's from a company called Idea RC Media showing  
6 that jjenkins70 account is being charged \$96. There's a  
7 Master Card associated with it to Joseph Jenkins.

8 Q Were able to determine what Idea RC is?

9 A I just did a little internet research, Idea RC appears  
10 to be a company that produces advertising for small  
11 businesses, kind of like the Yellow Pages, that idea.

12 Q And if we could see page 2, please. What's depicted on  
13 page 2?

14 A Well, page 1 showed a file that was created on the  
15 Toshiba at 11:49 so I wanted to see if there was any file  
16 activity on the thumb drives in close proximity to that, and  
17 I found that on the same date, roughly 15 minutes after the  
18 e-mail was accessed on the Toshiba, there were three video  
19 files, notmycap, TayMegBrook.avi, breekelsey.avi and  
20 nicolelovessteven.avi, these are all video files that were  
21 saved to the 8-gigabyte thumb drive 15 minutes after the  
22 e-mail was accessed. The breekelsey.avi, I found to contain  
23 child pornography.

24 Q And if you could please display page 3. Do you  
25 recognize page 3?

1 A Page 3 is a screen shot of one of the two adolescent  
2 females that are depicted in the video breekelsey.

3 Q Was that a video that you determined was child  
4 pornography?

5 A Exactly.

6 Q And if we can see page 4, please, and if you could  
7 explain to us what page 4 depicts.

8 A Having found the file breekelsey.avi on the 8-gigabyte  
9 thumb drive, I wanted to see if there was any evidence that  
10 it was ever contained on the Toshiba laptop, so I did a word  
11 search for breekelsey which is the file name, and I found  
12 that there were multiple instances of that file name being  
13 associated with the Toshiba laptop, to include in the middle  
14 screen you see that at one time a file by that name was  
15 contained in the Users/Joe/Desktop path.

16 Q How do you know that?

17 A Because that information was contained within drive  
18 free space on the Toshiba laptop.

19 Q But the video that you observed that the screen shot is  
20 contained in, page 3, you didn't find the video on the  
21 Toshiba laptop, is that correct?

22 A The video was not there, exactly.

23 Q You did find that on the thumb drive?

24 A Right.

25 Q But you found evidence of that title on the Toshiba?

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1 A Exactly.

2 Q What did that tell you?

3 A It tells me that that file was at one time on the Joe  
4 desktop and was moved to the 8-gigabyte thumb drive.

5 Q At this time I'm showing the witness what's been  
6 previously marked as Government's Exhibit 3L. I'm going to  
7 ask you if you recognize Exhibit 3L.

8 A Yes, I do.

9 Q What is Exhibit 3L, please?

10 A 3L is information I found associated with the computer  
11 at the -- on February 22nd of 2009.

12 Q Are there five pages associated with this exhibit?

13 A Yes, there are.

14 Q And those five pages, did you produce them as a result  
15 of your forensic examination in this case?

16 A Yes, I did.

17 MS. THOMSON: At this time, your Honor, I would  
18 offer into evidence Government's Exhibit 3L, pages 1 through  
19 5.

20 MR. GOLDSMITH: No objection.

21 THE COURT: It will be received.

22 Q Beginning with the first page of 3L, can we publish  
23 that. Can you tell us what's depicted on the first page?

24 A Yes. This is a listing of file activity on the Toshiba  
25 laptop computer from roughly 9:14 in the morning, up until

1 11:10 in the morning. At the very top you see 9:14, an  
2 e-mail is created, and there's some user activity with a  
3 Power Point viewer. Down at 10:05 a.m. a folder named Zoe is  
4 created in New Folder 2 and immediately eight video files are  
5 placed into the Zoe folder, and then at 11:10 a.m. an e-mail  
6 is accessed on the computer.

7 Q Beginning with the entry that you've identified as an  
8 e-mail being opened, is that depicted on page 2?

9 A Yes, it is.

10 Q And if we could look at page 2, please.

11 A This shows an e-mail, it came from the e-mail address  
12 imrat@yahoo.com and was addressed to  
13 jjenkins70@rochester.rr.com.

14 Q And what time do you show activity for this having been  
15 accessed?

16 A This was accessed at 9:14 in the morning.

17 Q Now after this e-mail was accessed you indicated there  
18 was other activity tied back to the New Folder 2, is that  
19 correct?

20 A Exactly, at 10:05, a folder named Zoe was created in  
21 New Folder 2.

22 Q If we could see page 3, please. Is this the contents  
23 of the folder Zoe?

24 A Yes, it is.

25 Q Did you view the contents of the folder Zoe including

1 each of the media files contained therein?

2 A Yes, I did.

3 Q And did you find evidence of child pornography?

4 A Four of the files I attributed as child pornography.

5 Q And if we could see page 4, please. Do you recognize  
6 page 4?

7 A This is screen capture of the girl who's depicted in  
8 all of the Zoe videos.

9 Q And after the Zoe videos were created and stored on the  
10 New Folder system, can you tell us what was the next user  
11 activity for that date?

12 A The next user activity was an e-mail.

13 Q And can we see page 5, please. Describe what you  
14 found.

15 A This is the e-mail that was accessed at 11:10 a.m. and  
16 it's again from imrat@yahoo.com to the  
17 jjenkins70@rochester.rr.com account.

18 Q What time was that e-mail opened?

19 A 11:10 in the morning.

20 Q And what time was that in relation to the first  
21 activity that you observed on that date?

22 A The first activity was at 9:14, roughly two hours  
23 earlier.

24 Q And what time was the Zoe page saved, Zoe multimedia  
25 files?



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1 A The Zoe files, the folder was created and immediately  
2 file saved to it at 10:05.

3 Q At this time I'm showing the witness what's been  
4 previously marked as Government's Exhibit 3M. Like Mary. Do  
5 you recognize Exhibit 3M?

6 A I do.

7 Q What is Exhibit 3M?

8 A Exhibit 3M is three pages, the first page shows file  
9 activity on the Toshiba laptop computer. Page 2 is an e-mail  
10 and page 3 is a screen shot of a video.

11 Q Did you create each of these pages as a result of your  
12 forensic examination of the Toshiba laptop and other media?

13 A Yes, I did.

14 MS. THOMSON: At this time, your Honor, we would  
15 offer into evidence Exhibit 3M.

16 MR. GOLDSMITH: No objection.

17 THE COURT: It will be received.

18 Q If we could publish the first page, please. Can you  
19 tell us what's depicted on that first page?

20 A Yes. The highlighted line shows an e-mail was created  
21 on the Toshiba laptop at 10:19 p.m., and then two lines below  
22 that, a child pornography video, sierra.avi was created at  
23 10:30 p.m.

24 Q So let's start first with the e-mail. Do you see  
25 page 2, please?

1       A       Page 2 shows the e-mail that was created at 10:19 p.m.  
2       and the e-mail is from the jjenkins70@rochester.rr.com  
3       account, and it's addressed to an individual known as Dave  
4       Montes, it appears to be an e-mail involving electrical work  
5       being done and it's signed, Joe.

6       Q       If you could just read the first line of the e-mail.

7       A       "Dave, I am researching the phase converter. I think  
8       you need a digital phase converter that is safer for  
9       electronics, for the lasers anyways."

10      Q       What time was this e-mail sent?

11      A       At 10:19 p.m.

12      Q       And what was the next activity you observed?

13      A       Eleven minutes later, a video file sierra.avi which  
14      contains child pornography was saved to the computer.

15      Q       And I'm showing you now page 3. Is that a still shot  
16      of the video?

17      A       Yes, it is.

18      Q       And is that a video that we already observed earlier?

19      A       Exactly.

20      Q       That video coming from the New Folder 2?

21      A       Right.

22      Q       At this time I'm handing you what's been previously  
23      marked for identification purposes as Government's  
24      Exhibit 3N. I'll ask you if you recognize Exhibit 3N.

25      A       Yes, I do.

1 Q Is this a seven-page document?

2 A It is.

3 Q Each of the documents that are contained herein, are  
4 they from your examination of the electronic media in this  
5 case?

6 A Yes, they are.

7 Q And did you produce these documents from your  
8 examination?

9 A Yes, I did.

10 MS. THOMSON: At this time I would offer into  
11 evidence Government Exhibit 3N.

12 MR. GOLDSMITH: No objection.

13 THE COURT: It will be received.

14 Q Can you tell us what you found relevant to this  
15 investigation on May 22nd, 2009?

16 A Yes. This first screen depicts files that are  
17 contained on the 4-gigabyte thumb drive. If you look in the  
18 upper left-hand box, that shows the directory structure for  
19 the contents of the 4-gigabyte thumb drive. Those yellow  
20 boxes indicate that they were folders on the thumb drive and  
21 down near the bottom of that box, I highlighted 052209,  
22 that's the name of one of the folders, and highlighting that,  
23 that opens up in the lower box, the contents of that folder,  
24 so in total there were roughly 238 graphic files contained  
25 within folder 052209. They don't all fit on this screen, but

1 one of those particular pictures is elena038.jpg which I have  
2 highlighted in the lower box and when I highlight that, that  
3 opens up the picture itself in the upper right-hand box on  
4 the screen.

5 Q So the image that we see, and by image I mean photo?

6 A Exactly.

7 Q Is that Elena?

8 A That's elena038.jpg, the full picture does not fit  
9 within the box. If I were to scroll down, that little girl,  
10 she's roughly eight years old, she's totally naked and she's  
11 posed in a manner to display her genitals in a lascivious  
12 manner. At the top left-hand corner of the graphic file is a  
13 caption, Lolita's Art, and [www.Lolitasart.com](http://www.Lolitasart.com).

14 Q You just described the image and used a term that she's  
15 exposing her genitals in a lascivious manner. Can you tell  
16 us what you mean by that?

17 A Well, that's the -- that's one of the definitions for  
18 child pornography in the federal statute basically, there are  
19 such things as nudity which do not become pornography but  
20 when you are focusing on the genitals, when you're posing the  
21 person so that their genitals are a prominent part of the  
22 picture, if the person's legs are spread or in another way  
23 accentuate the genitals, that would become child pornography.

24 Q And the image of child pornography, we just see the top  
25 part, is that correct, on this exhibit?

1 A We just see the top third of the picture, yes.

2 Q And so if I understand you correctly, 238 graphic files  
3 were saved to the 4-gigabyte at 10:25 p.m.?

4 A Right, within a minute of each other, yes.

5 Q All right. If you could look at page 2, please, and  
6 explain to us what page 2 shows.

7 A Well, having found that file activity on the 4-gigabyte  
8 thumb drive, I wanted to see if it was associated with the  
9 Toshiba laptop so I went to the Toshiba laptop and I looked  
10 for what file activity was in the surrounding time so  
11 May 22nd of 2009, I started 10:25 in the evening, that's when  
12 the files were created on the 4-gigabyte and I went back to  
13 see when file activity began on the Toshiba.

14 Q What did you find?

15 A I found that there was continuous file activity on the  
16 Toshiba between 8:17 and 10:25 in the evening.

17 Q Can you describe that activity?

18 A There were over a thousand files created during that  
19 period of time to include files that would indicate to me  
20 that someone was accessing the internet.

21 Q How do you get that indication?

22 A Well, the page we're on, if you go to page 2 of the  
23 exhibit. Appear to be a little bit out of order.

24 Essentially page 2, it won't be particularly relevant other  
25 than to show that the file activity began at 8:17, page 3 is

1 a little bit more relevant to us.

2 Q Can we see page 3, please.

3 A That's the picture that's depicted here. Page 3, I  
4 found an HTML document which would be a web page that was  
5 created on the computer at 8:46 p.m. on May 22nd. And the  
6 web page itself looks like it comes from imgsrc.ru which is  
7 known as Image Source, .ru, it's a Russian website that  
8 shares photos. This particular web page has a subheading  
9 showing preteen and tween girls.

10 Q And that's noted right in the title?

11 A It's on the title of the web page, exactly.

12 Q What significance did that have to you in your  
13 investigation?

14 A Well, preteen and tween girls would suggest to me that  
15 it's child pornography or child erotica, Image Source is well  
16 known as -- it's a legitimate site in the sense that it  
17 shares graphic files of all sorts of topics, you can go there  
18 and you can find pictures of sporting events, nature scenes,  
19 et cetera, but it's also been used quite a bit by child  
20 pornographers to maintain databases of child pornography  
21 content.

22 Q Is that what you've seen in other investigations as  
23 well?

24 A Yes.

25 Q And page 4, if you could describe what's on page 4 and

1 its relevance to this investigation.

2 A Page 4 is another HTML document so in other words,  
3 another web page that was contained on the computer and was  
4 created at 8:44 on May 22nd, 2009. This is another web page  
5 from imgsrc.ru and the caption for that web page is "young  
6 girls braless and pokies".

7 Q And page 5, please.

8 A Page 5 is a graphic file that was created on the laptop  
9 computer at 8:52 p.m. It's -- it was not child pornography,  
10 it was a child erotica picture contained on the computer.

11 Q And where was that contained?

12 A On the Toshiba laptop.

13 Q And if you could look at page 6, please. What did you  
14 find that's depicted on page 6 that's of significance to this  
15 investigation?

16 A Page 6, I searched for the file title elena038 and I  
17 found here on the top of the screen that at one time that  
18 picture that I showed you initially, the little girl with the  
19 Lolita's Art, that file name was contained in a path  
20 Users/Joe/Pictures/052209 which would be the folder and then  
21 elena038. There you go right there. The file that I found  
22 on the 4-gigabyte thumb drive, I found that file name and  
23 folder name as well on the Toshiba laptop, and at one time it  
24 had been contained within the Joe Pictures folder.

25 Q And the last page?

1       A       The final page just shows the final activity for the  
2       laptop computer on May 22nd, it ceases activity at 10:25 p.m.  
3       which is in close proximity to when those files were created  
4       on the 4-gigabyte thumb drive. If you look also at the files  
5       above there, you'll see a lot of files with the file name  
6       long string of Zs and file extension of .zzz. Those are all  
7       files that had been wiped and they're indicative of action by  
8       this CCleaner program.

9       Q       And so that would be wiped on the Toshiba?

10      A       Exactly.

11      Q       But then you see those files show up at 10:25 p.m. on  
12      the 4-gigabyte thumb drive?

13      A       That's the time the files were saved to the 4-gigabyte,  
14      right.

15      Q       During your examination of the media in this case, were  
16      you able to examine to see if there was any evidence of  
17      accessing websites indicative of child pornography?

18      A       Yes.

19      Q       How did you do that?

20      A       Using EnCase, I searched for the -- on the hard drives  
21      for the Toshiba and the Compaq computer for internet  
22      artifacts, that would be cookies, bookmarks, index, .gat  
23      files and other items that would be associated with internet  
24      activity.

25      Q       What did you find?



1 A I found search terms and things of that nature, URLs  
2 that were indicative of child pornography.

3 Q Do you recall what those were?

4 A There was I believe a Lola sex, things along the nature  
5 of Lolita, jailbait, things of that nature.

6 Q As part of your examination of the two laptops that you  
7 were asked to examine, did you review them for any markings  
8 indicating where they were manufactured?

9 A Yes, I did.

10 Q Start with the Toshiba which is just, for the record,  
11 Government Exhibit Number 3A. What did you observe?

12 A On the back of the Toshiba laptop there's a  
13 manufacturer plate and it shows Made in China.

14 Q Any other components to the Toshiba laptop that you  
15 looked at for markings?

16 A I removed the hard drive and hard drive has a separate  
17 manufacturer marking.

18 Q And do you recall where that was manufactured?

19 A I do. The hard drive was made in The Philippines.

20 Q Where is that stamp that indicates its place of  
21 manufacturer?

22 A This is the hard drive that comes out of the laptop,  
23 and it's stamped right on the face of the hard drive.

24 Q And how about for the laptop itself?

25 A It's right on the back of the hard -- back of the

1 computer.

2 Q And I have the same question for the Compaq.

3 THE COURT: Which is exhibit number?

4 MS. THOMSON: I'm sorry. Exhibit?

5 THE WITNESS: Exhibit 7, sir.

6 THE COURT: Thank you.

7 Q Are you able to determine that?

8 A The laptop, it was also produced in China.

9 Q Thank you. As part of your investigation, did you do a  
10 forensic examination of the 8-gigabyte thumb drive that's  
11 already been received into evidence and you've already  
12 viewed?

13 A Yes, I did.

14 Q I'm now handing you what's packaged together as  
15 Government's Exhibit 4A, 5A, and 6 and I'd like you to look  
16 at Exhibit 4A, the 8-gigabyte thumb drive. Is that the thumb  
17 drive that you examined?

18 A Yes, it is.

19 Q How did you begin your examination of the thumb drive,  
20 if you could explain that process.

21 A The first thing I did with the thumb drive was I  
22 connected to a write block which was then connected to my  
23 forensic machine and I created an image of the thumb drive.

24 Q Now you previously gave testimony with regard to the  
25 write block of the Toshiba laptop; did you do the same

1 process with the 8-gigabyte?

2 A Yes, I did.

3 Q For the same purpose?

4 A Exactly.

5 Q And just briefly, what's that purpose?

6 A The purpose is to ensure that I don't make any changes  
7 to the files that are contained within the original evidence.

8 Q What software did you use to do your examination?

9 A I did, I used FTK and I believe I used EnCase as well  
10 for these.

11 Q What was the result of your examination with regard to  
12 evidence of child pornography on the 8-gigabyte thumb drive?

13 A The 8-gigabyte I found I believe 15 child pornography  
14 graphic files, and 96 movie files.

15 Q I'm now handing you what's been previously marked for  
16 identification purposes as Government's Exhibit 4B. Do you  
17 recognize Exhibit 4B?

18 A Yes, I do.

19 Q What is Exhibit 4B?

20 A These are graphic files.

21 Q Where did those graphic files come from?

22 A I believe this is the one from the 8-gigabyte thumb  
23 drive.

24 Q Did you have an opportunity to review Exhibit 4B?

25 A Yes, I did.

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1 Q And did you view it to ensure that the graphic files  
2 that you obtained from the 8-gigabyte thumb drive are  
3 contained on Exhibit 4B?

4 A Yes.

5 Q On Exhibit 4B did you also add the graphic files that  
6 were found from the 4-gigabyte thumb drive?

7 A Yes.

8 Q Was that because the examination of those two were  
9 imaged and placed in the same location?

10 A They were all in the same FTK case, yes.

11 Q So Exhibit 4B does contain all of the graphic files  
12 that you obtained from the 4 and the 8-gigabyte thumb drive?

13 A Correct.

14 Q And is that a copy of what you obtained from the thumb  
15 drives?

16 A Right.

17 Q And is that copy an accurate and -- true and accurate  
18 copy of the originals as you saw them on the thumb drives?

19 A Yes, it is.

20 MS. THOMSON: At this time, your Honor, I would  
21 move into evidence Exhibit 4B.

22 MR. GOLDSMITH: Brief voir dire?

23 THE COURT: Go ahead.

24 VOIR DIRE EXAMINATION BY MR. GOLDSMITH:

25 Q Agent Braisted, does that contain all of the files that

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1     you copied or some?

2     A     Well, it contains all the files that I bookmarked as  
3     child pornography.

4     Q     Okay. Let me rephrase, all the image files?

5     A     The graphic files, yes, sir.

6     Q     Did you make that particular copy you're holding in  
7     your hand?

8     A     I did not.

9     Q     Did you have the opportunity to compare the disk that  
10    you produced to the disk that you're holding in your hand?

11    A     Yes, sir.

12    Q     And are they the same or substantially the same?

13    A     Yes, they are.

14           MR. GOLDSMITH: No objection.

15           THE COURT: It will be received.

16           CONTINUED DIRECT EXAMINATION BY MS. THOMSON:

17    Q     At this time I'm handing you what's been previously  
18    marked for identification purposes as Exhibit 4C. I'm going  
19    to ask you if you recognize Exhibit 4C.

20    A     I do.

21    Q     What is Exhibit 4C?

22    A     This is video files from the thumb drives.

23    Q     From both thumb drives?

24    A     Yes.

25    Q     And the thumb drives that we're talking about are the

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1 ones that are before you in Government Exhibit 4A, 5, and 6?

2 A Yes.

3 Q Did you place your initials on that exhibit, 4C?

4 A I did, yes.

5 Q Did you review that exhibit?

6 A Yes.

7 Q And does that exhibit contain all of the multimedia  
8 files that you recovered from the 8-gigabyte thumb drive and  
9 4-gigabyte thumb drive?

10 A The ones that I identified as child pornography,  
11 exactly, yes.

12 Q And are those true and accurate copies of the videos  
13 that you obtained from those thumb drives?

14 A Yes, they are.

15 MS. THOMSON: At this time, I would move into  
16 evidence Exhibit 4C.

17 THE COURT: Any objection? Voir dire?

18 MR. GOLDSMITH: Brief voir dire, your Honor.

19 VOIR DIRE EXAMINATION BY MR. GOLDSMITH:

20 Q Agent Braisted, did you create the CD that you're  
21 holding in your hand?

22 A I did not.

23 Q Did you have the opportunity to compare the CD that you  
24 created with your forensic software to the CDs that you're  
25 holding in your hand?

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1 A Yes.

2 Q Was it the same or substantially similar?

3 A Yes.

4 MR. GOLDSMITH: No objection.

5 THE COURT: It will be received.

6 CONTINUED DIRECT EXAMINATION BY MS. THOMSON:

7 Q At this time I'm handing the witness what's previously  
8 been marked as Exhibits 4D, 4E, and 4F. Do you recognize  
9 Exhibit 4D, 4E, and 4F?

10 A Yes, I do.

11 Q What are Exhibits 4D through 4F?

12 A These are three graphic files that were found on the  
13 8-gigabyte thumb drive.

14 Q And are each of those exhibits double-sided pages?

15 A Yes, they are.

16 Q On the front page is the file path noted for where the  
17 image was located?

18 A Exactly.

19 Q And on the reverse side is it the image itself?

20 A Yes.

21 Q And are those images that were found in your  
22 investigation and contained on Exhibit 4B?

23 A Yes.

24 Q And 4B also being the disk that you created of the  
25 image files?

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1 A Yes.

2 MS. THOMSON: At this time, your Honor, I would  
3 offer into evidence Exhibits 4D through 4F.

4 THE COURT: Any objection?

5 MR. GOLDSMITH: No objection.

6 THE COURT: It will be received.

7 Q These are contained within the jury binders so if the  
8 jury could open up their binder to tab 4D. Agent Braisted,  
9 starting with the first side of 4D, can you tell us what was  
10 on the first page, front side?

11 A This is the file path where the -- this particular file  
12 was located, it was on the 8-gigabyte drive and the file name  
13 is -- not asterisk, !1.jpg.

14 Q And on the reverse side?

15 A This is the picture that constitutes the !1.jpg.

16 Q Was that an image of child pornography?

17 A Yes, it is.

18 Q And if we could turn to Exhibit 4E, please. And can  
19 you tell us what's on the first page, front page of 4E?

20 A This is a file path showing that the graphic file  
21 depicted here came from the 8-gigabyte drive and it was a  
22 jpeg\_753664[38].jpg.

23 Q And on reverse side?

24 A That is the picture that reflects that file name.

25 Q Can you just briefly describe that picture?



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1 A It's a little girl seven or eight years of age, laying  
2 down resting on a teddy bear, her genitals exposed.

3 Q And if you could look at 4F, please. Can you tell us  
4 what the file path was for 4F?

5 A 4F is another graphic file that came from the  
6 8-gigabyte drive and the file name is jpeg\_ 8699904[467].jpg.

7 Q And the image on the reverse side of the page?

8 A It's an adolescent girl with her legs spread, she's  
9 naked and she's exposing her genitals.

10 Q On this image do you also see notation on the bottom  
11 right corner, and if so, could you describe it, please.

12 A Yes, it's a stamp for the file indicating it's from  
13 www.bdcompany.com or.net and BD Company is a purveyor of  
14 child pornography.

15 Q Have you seen that in other investigations?

16 A Yes, I have.

17 Q You can put the jury binders. I believe you indicated  
18 that you created a CD or participated in the creation of a CD  
19 of the multimedia files with regard to the 8-gigabyte and the  
20 4-gigabyte thumb drives?

21 A Correct.

22 MS. THOMSON: Your Honor, at this point we would be  
23 doing more videos, I don't know if the court wanted to take a  
24 break while we turn things off?

25 THE COURT: Okay, ladies and gentlemen, we're going

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1 to take just a brief break to set up the videos, and please  
2 do not discuss the case, we'll get you back out here.

3 (Jury Excused, 11:07 a.m.)

4 THE COURT: We'll just make sure they're off, and  
5 again, have Mr. Jenkins' monitor turned, and position  
6 themselves so they can view the videos, the rest of them will  
7 be seen by counsel and the jury only. You let me know when  
8 you're all set. Is it all cued up? You got it, know where  
9 it is this time?

10 COMPUTER TECHNICIAN: It crashed before.

11 THE COURT: Did it? Okay. All right. Let's bring  
12 the jury in, please. Ms. Thomson, we're playing a portion of  
13 4C, is that right?

14 MS. THOMSON: Yes, and that was contained also on  
15 4G.

16 THE COURT: Okay.

17 (Jury Present, 11:12 a.m.)

18 THE COURT: Okay, the record should reflect we have  
19 the ladies and gentlemen of the jury, government's going to  
20 publish part of the video from Exhibit 4C. Go ahead.

21 MS. THOMSON: Thank you, your Honor.

22 Q Did you have the opportunity to view clips that were  
23 taken from the videos you found on the 8-gigabyte thumb  
24 drive?

25 A Yes, I was.

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1 Q Beginning with the first clip, is this a video that was  
2 identified by title as 9YO Vicky?

3 A Yes.

4 MS. THOMSON: And for the record that is a video,  
5 one minute and 39 seconds in length and we'll be playing a  
6 short clip which is contained at 00 to 12 seconds and 1  
7 minute and 7 seconds to 1 minute and 14 seconds.

8 THE COURT: Okay.

9 (A video clip from Government's Exhibit No. 4C  
10 was played.)

11 Q As the video continues on, can you tell us what's  
12 depicted in the video?

13 A She becomes totally naked eventually.

14 Q And if we could play the second clip.

15 (A video clip from Government's Exhibit No. 4C  
16 was played.)

17 Q How does the video continue?

18 A She performs fellatio on the man.

19 Q This video is -- has a file title Vicky, have you seen  
20 that file title before?

21 A I have, yes.

22 Q In the course of doing your examinations?

23 A Exactly.

24 Q And if we could see the third clip, and for the record,  
25 that would be the clip identified as sasha\_S3, video, 4

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1 minutes and 59 seconds in length, we will be playing the clip  
2 at 4:42 to 4:46.

3 (A video clip from Government's Exhibit No. 4C  
4 was played.)

5 Q And can you tell us, did you watch the entire video of  
6 sasha\_S3?

7 A Yes, I did.

8 Q What's depicted on that video?

9 A It's a young girl and she's totally naked and  
10 displaying her genitals in a lascivious manner.

11 Q And this clip four, which will be our third video,  
12 titled 0036, length of the video 8 minutes and 14 seconds and  
13 we're only showing one second, and that's contained at 3:08.

14 (A video clip from Government's Exhibit No. 4C  
15 was played.)

16 Q Did you watch this entire video?

17 A I did.

18 Q What's contained in this video?

19 A It's two adolescents engaging in sex with each other  
20 and there's an adult male having sex with them as well.

21 Q Is there -- adolescents, male, female?

22 A I believe one male and one female as I recall.

23 Q Throughout the video, are they engaged in sex acts  
24 throughout the entire video?

25 A Yeah, for the preponderance of the video, yes.

1 Q What are the total number of videos that you recovered  
2 during your examination on the 8-gigabyte thumb drive?

3 A 96 videos that I classified as child pornography.

4 Q Now if we can talk about the 4-gigabyte thumb drive  
5 that is Government Exhibit 5A. Did you do an examination of  
6 that 4-gigabyte thumb drive?

7 A Yes, I did.

8 Q And do you have that exhibit in front of you, 5A, the  
9 thumb drive?

10 A Yes, I do.

11 Q How did you begin your examination of this thumb drive?

12 A I connected it to my write block and then connected the  
13 write block to my forensic machine and I created a  
14 bit-for-bit copy, an image file of the 4-gigabyte contents.

15 Q What software did you use to do your analysis?

16 A I used FTK and EnCase.

17 Q Can you please tell us what the results of your  
18 analysis was as it relates to child pornography found on the  
19 4-gigabyte thumb drive?

20 A The preponderance of the contents of the 4-gigabyte  
21 thumb drive were child pornography graphic files. I found  
22 3,250 that I bookmarked as child pornography, an additional  
23 16 that I bookmarked in a separate category as bondage  
24 graphic files but again depicting child pornography and I  
25 found I believe 10 video files also on the 4-gigabyte thumb

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1 drive.

2 Q At this time I'm handing you what's been previously  
3 marked as Government's Exhibits 5B, 5C, and 5D and I'm going  
4 to ask you if you recognize these exhibits.

5 A I do recognize them, yes.

6 Q What are they?

7 A They are graphic files that were contained on the  
8 4-gigabyte thumb drive.

9 Q Beginning with Exhibit 5B, does that contain a front  
10 page that has the file path and the image on the reverse?

11 A Yes, it does.

12 Q And the same for Exhibit 5C and 5D?

13 A Yes.

14 MS. THOMSON: At this time, your Honor, I would  
15 move to admit Exhibits 5B, 5C, and 5D.

16 THE COURT: Any objection?

17 MR. GOLDSMITH: No objection.

18 THE COURT: It will be received.

19 Q And if the jury could pick up your juror binder and  
20 beginning with the tab that's marked 5B. Starting with 5B,  
21 can you tell us what's on the front page of the exhibit?

22 A The front page shows the file path coming from the  
23 4-gigabyte thumb drive, it was in a folder labeled 0215 and  
24 the file name itself is 110.jpg.

25 Q And the image on the reverse side. Could you describe

1     that image?

2     A     It's an adolescent female with her knees up, she's  
3     naked and displaying her genitals. On the top left there's a  
4     caption, Lolly edition.

5     Q     Have you seen that Lolly edition in prior child  
6     pornography investigations?

7     A     Yes, I have.

8     Q     And 5C, can you tell us what the file path for the  
9     image that's contained on the reverse side?

10    A     5C came from the 4-gigabyte thumb drive, it was in New  
11    Folder 54, and the file name is 1172797076831.jpg.

12    Q     And can you tell us about the image on the reverse  
13    side?

14    A     It's a young girl approximately 10 years of age and  
15    she's being penetrated by an adult male.

16    Q     And 5D, please, can you tell us the file path for 5D?

17    A     5D came from the 4-gigabyte thumb drive, it was in a  
18    folder structure labeled 032309 and the file name is  
19    1239846239242.jpg.

20    Q     And the image on the reverse?

21    A     Image on the reverse is adolescent female, she's naked  
22    with her legs spread and she's tied up by the legs and also  
23    apparently by the neck.

24    Q     Each of those images you classified as images of child  
25    pornography?

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1 A Yes, I did.

2 Q If I could just retrieve. And you indicated that you  
3 prepared a disk with the multimedia files together of the  
4 8-gigabyte and the 4-gigabyte multimedia files that you  
5 recovered?

6 A Exactly.

7 Q And that's been previously identified by you?

8 A Yes.

9 Q So we are again ready to play clips.

10 THE COURT: And it's 4C --

11 MS. THOMSON: Yes.

12 THE COURT: -- that you're ready to play.

13 (A video clip from Government's Exhibit No. 4C  
14 was played.)

15 Q And for the record, what's been played is file title  
16 1.avi, length of the video is 1 minute, 16 seconds and we  
17 played at zero to 04 seconds. Did you have the opportunity  
18 to view the entire file?

19 A I did.

20 Q And can you give a description of what happens in the  
21 entire video?

22 A There's a male and a female, they're engaging in sex,  
23 the girl is probably 10 or 11 years of age, the boy might be  
24 anywhere from 16 to 18 years of age.

25 Q And on -- did you have opportunity to view a second



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1 clip also that you took of multimedia file?

2 A Yes.

3 Q And is that clip with regard to the Vicky file?

4 A (Witness gesturing affirmatively.)

5 Q Did you observe the Vicky file that you've already  
6 shown today on both the 8-gigabyte and the 4-gigabyte thumb  
7 drive?

8 A Yes, I did.

9 Q Is it the same video in content?

10 A It is.

11 Q And if we could just show briefly the first couple  
12 seconds.

13 (A video clip from Government's Exhibit No. 4C  
14 was played.)

15 Q So that video was on both?

16 A Right.

17 Q The total videos that you found on the 4-gigabyte thumb  
18 drive?

19 A Ten, I believe.

20 Q In addition to finding evidence of child pornography,  
21 did you find any other evidence of forensic significance to  
22 you on the 4-gigabyte thumb drive?

23 A Yes, I did.

24 Q What did you find?

25 A The 4-gigabyte thumb drive had thousands and thousands

1 of files, primarily graphic files or video files. There was  
2 a single text document on that 4-gigabyte thumb drive and I  
3 opened it up to see what the text was and it appeared to be a  
4 message from someone asking for a password to access a child  
5 pornography website.

6 Q I'm now handing you what's been previously marked as  
7 Government's Exhibit 5F and 5G. I'm going to ask you if you  
8 recognize Exhibit 5F and 5G.

9 A Yes, I do.

10 Q Can you tell me what Exhibit 5F and 5G are?

11 A 5F is a screen shot from my FTK program showing a  
12 folder and a file within that folder on the 4-gigabyte thumb  
13 drive and the contents of the file is a person requesting for  
14 an access to a child pornography site. 5G is a screen shot  
15 of a web page that was saved to the Joe Desktop and it  
16 appears to be associated as the same web page for which the  
17 4-gigabyte text file is requesting access.

18 Q Did you create Exhibits 5F and 5G from your examination  
19 of the media in this case?

20 A Yes, I did.

21 Q In particular the 4-gigabyte thumb drive?

22 A Yes.

23 MS. THOMSON: At this time, your Honor, I would  
24 offer into evidence Government's Exhibits 5F and 5G.

25 THE COURT: Counsel?

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1 MR. GOLDSMITH: No objection.

2 THE COURT: It will be received.

3 Q What was the significance of your finding 5F and 5G?

4 A Well, 5F is a text document and it's got at the top  
5 caption Lolita House XXX, it's dated 09/05/12, but I believe  
6 that's the European translation so really May 9th of 2012 --  
7 I'm sorry, 12 -- oh, I'm sorry, it's May 12th of 2009, and  
8 then it indicates letitbit.net which is a website and it's  
9 asking for, "Can somebody post correct PW for me? Doesn't  
10 work. Thanks in advance." Then below that it shows "Sasha  
11 Girl 12 year old movie." Below that, two lines below that  
12 there's pass and then there's a code which appears to be a  
13 password. Below that, a line that says, "Pass only works on  
14 Russian PCs. Look at the H tat follows the E." And then  
15 below that there's a number of lines and it looks like the  
16 password, when you go about 12 to 15 characters in, the  
17 letters are in Cyrillic which is the Russian alphabet,  
18 wouldn't be -- you wouldn't be able to do that on an American  
19 keyboard. So apparently the user was trying to find out how  
20 to access that particular web page.

21 Q And on 5G?

22 A This is a web page that was saved to the Joe Desktop,  
23 and down in the bottom of the page to the left it shows a  
24 picture of a young girl, it's not child pornography, the girl  
25 is an adolescent but she's wearing a bra and it looks like

1 she's taking her clothes off, it's captioned Lolita House and  
2 to the right of that, you'll see there is the word pass and  
3 then a long string of characters which match the password  
4 that the person was asking for on the text document on the  
5 4-gigabyte thumb drive.

6 Q What significance did that have to you as it relates to  
7 this investigation?

8 A Well, it suggested to me that the person was trying to  
9 access this website and wasn't able to do so because his  
10 password wasn't working so he sent a message out to the  
11 community trying to find out what the proper password would  
12 be.

13 Q As part of your examination in this case, did you also  
14 examine other media that was handed over to you from Agent  
15 Chad Willard?

16 A I did.

17 Q Did that include the Compaq laptop that's in front of  
18 you?

19 A Yes.

20 Q And that would be Exhibit?

21 A 7.

22 Q As it relates to this investigation, what findings did  
23 you make, if any, on the Compaq laptop?

24 A I didn't find any child pornography on the Compaq  
25 laptop, I found CCleaner, and in residual artifacts, I found

1 some terms that suggested child pornography but no actual  
2 files.

3 Q Did you also conduct an examination of the 2-gigabyte  
4 thumb drive that was handed over to you by Special Agent Chad  
5 Willard?

6 A Yes, I did.

7 Q And that I believe is Exhibit?

8 A 6.

9 Q 6. What, if any, findings did you make with regard to  
10 that thumb drive?

11 A There was no child pornography on that thumb drive.

12 Q And did you look at Government Exhibit Number 8, the  
13 camera?

14 A I did.

15 Q And what findings, if any, did you make with regard to  
16 the camera?

17 A No child pornography.

18 Q And did you also attempt an examination of a Motorola  
19 cell phone, Government Exhibit Number 9?

20 A I did.

21 Q What were the results of that examination?

22 A I wasn't able to examine it, I wasn't -- either my  
23 software wasn't working or the cell phone didn't work.

24 Q We've talked a little bit about -- it's been a little  
25 while, about hash values; did you do any hash comparisons

1 between the 8-gigabyte thumb drive and the 4-gigabyte thumb  
2 drive?

3 A Yes, I did.

4 Q At this time I'm handing you Government Exhibit 14.  
5 I'm going to ask you if you recognize Government Exhibit 14.

6 A Yes, I do.

7 Q What is Government Exhibit 14?

8 A Government Exhibit 14 is two pages, they're two  
9 separate spreadsheets containing files from the Toshiba  
10 laptop and files from the 4-gigabyte and 8-gigabyte thumb  
11 drive. What I did was I did an MD5 hash for each individual  
12 file on the Toshiba laptop for files that are identified as  
13 child pornography, and then I did a hash value for all of the  
14 files that are contained on the 4-gigabyte and the 8-gigabyte  
15 and I matched the hash values to see if in any situations  
16 files that were contained on the 4-gigabyte and 8-gigabyte  
17 were also contained on the Toshiba.

18 Q What did you find?

19 A I found 11 matches for files that were contained on  
20 both the thumb drives and the Toshiba laptop.

21 Q And Government Exhibit 14, is that a document that you  
22 produced as part of your examination?

23 A Yes, it is.

24 Q And does that reflect the hash values that you  
25 determined and compared for the 4 and the 8-gigabyte on one

1 page and the Toshiba on the other page?

2 A Yes, it does.

3 MS. THOMSON: Your Honor, at this time I would  
4 offer into evidence Government Exhibit 14.

5 THE COURT: Counsel?

6 MR. GOLDSMITH: No objection.

7 THE COURT: It will be received.

8 Q And if we could publish Exhibit 14, please. What's  
9 shown on that first page?

10 A These are file names, file paths, create dates and MD5  
11 hash values for 11 files.

12 Q And on the second page?

13 A That would be the same information file name, file  
14 path, create date, and MD 5 hash for files that were  
15 contained on the Toshiba laptop.

16 Q At this time I'm handing you what's been previously  
17 received into evidence as Government's Exhibit 5B. It is  
18 contained in the jury binder, feel free to review it if you  
19 wish. Exhibit 5B, did you find that file path on your hash  
20 comparisons?

21 A Yes, I did.

22 Q So what does that tell you?

23 A That it was on both the 4-gigabyte thumb drive and the  
24 Toshiba laptop computer.

25 Q In summary, during this investigation, about,

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1 approximately how many images of child pornography did you  
2 find in total between the Toshiba laptop, the 8-gigabyte  
3 thumb drive and the 4-gigabyte thumb drive?

4 A Are you talking graphic files?

5 Q Graphic.

6 A Roughly 4,000 graphic files.

7 Q And about how many video files?

8 A About 116.

9 Q And earlier in your testimony when you showed us the  
10 user activity that was going on on that Toshiba laptop as it  
11 related to images and videos of child pornography, all of  
12 that activity that you showed us in Exhibits 3I, 3J, 3K, 3L,  
13 3M, and 3N, was that activity performed by the user with  
14 profile named Joe?

15 A Exactly.

16 MS. THOMSON: One moment, your Honor.

17 THE COURT: Okay.

18 MS. THOMSON: That may be all. Just want to check  
19 with counsel.

20 (Pause in Proceedings.)

21 MS. THOMSON: That's all, your Honor.

22 MR. GOLDSMITH: May I inquire?

23 THE COURT: You may.

24 CROSS-EXAMINATION BY MR. GOLDSMITH:

25 Q Special Agent Braisted, throughout your forensic



1 evaluation of the laptops and the flash drives in this  
2 particular case, there were several determinations that were  
3 made as to whether something qualified or not as child  
4 pornography. Did you make that determination or did someone  
5 else?

6 A I made that determination.

7 Q As part of your training within the -- within your  
8 experience working with Homeland Security, you've received  
9 training and education on the determination of child  
10 pornography?

11 A I use case law and I use my experience.

12 Q So have you had any training related to determining  
13 child pornography?

14 A I've had training on the law, the case law. During  
15 those training sessions they don't display child pornography  
16 and say, this is child pornography or this is not child  
17 pornography.

18 Q So they leave it to your discretion?

19 A Yes.

20 Q And all of the examples that you provided and testified  
21 about earlier today were based upon your discretion, correct?

22 A Right. Correct.

23 Q Now you've discussed creating the forensic image hard  
24 drive. Did you create one image, forensic image hard drive,  
25 for all of the media that you've discussed?

1 A I put -- I put all the images on one hard drive, yes.

2 Q Now, you recall testifying yesterday that upon your  
3 receipt of the materials, you had also reviewed some of the  
4 Canadian forensic reports, is that correct?

5 A Not at that time. I think later on I did review them,  
6 yes.

7 Q Do you recall when you reviewed the Canadian forensic  
8 reports?

9 A Not specifically, no.

10 Q Now you actually -- well, withdrawn. Do you recall if  
11 it was closer in time to when you commenced your  
12 investigation or further in time?

13 A It would have been further in time. Basically I got  
14 the evidence from the case agent, Agent Willard, on the 7th I  
15 came right back to the lab, I didn't receive anything more  
16 from him. Well, I'm not sure that I received anything more  
17 from him until I contacted him a month later to tell him that  
18 my initial exam was complete and ready for him.

19 Q All right. Now, you, you conduct one specific study or  
20 did you perform a series of studies on the materials?

21 A I did an initial examination on all of the evidence  
22 that was submitted to me, and based on that initial  
23 examination I prepared a document saying this is my findings  
24 and I submitted that to the case agent. The following year I  
25 was contacted and they requested that I go into further depth

1 to try to find out file activity in close proximity to the  
2 child pornography images that I had identified.

3 Q That was prompted to you by the case agent?

4 A Yes.

5 Q Subsequent to that review, were there other reviews  
6 that you did?

7 A As it -- as this case starts to go to trial, other  
8 questions will arise and I'll continue to do additional  
9 research on the hard drives.

10 Q Do you recall approximately when your subsequent  
11 examinations were?

12 A I believe March of 2012.

13 Q All right. You discussed on a couple of occasions  
14 during your testimony the restore point or the system volume  
15 information?

16 A Yes.

17 Q Is that something that is readily accessible to the  
18 user?

19 A The restore point is readily accessible. The contents  
20 of the system volume information would not be readily  
21 accessible.

22 Q And in your experience with the materials and the media  
23 that you examined in this particular case, were the materials  
24 that were found within the system volume information  
25 accessible to the user?

1 A The only way to be accessible would be if a person went  
2 and tried to do a restore. Upon doing a restore, those files  
3 would be recreated on the system.

4 Q And you -- and did you note any attempts to restore?

5 A No.

6 Q So it would be fair to say that based upon your  
7 examination of the evidence, anything that was found within  
8 the system volume information was not accessible to the user  
9 on or about May 24th of 2009?

10 A Not accessible short of going to the restore, right.

11 Q You also discussed the thumb cache. Were the materials  
12 that were located in the thumb cache of the computers  
13 accessible to the user?

14 A You would use -- need to use software to actually look  
15 at the thumb cache.

16 Q All right. And your examination of the two laptops,  
17 did you find presence of a software that would be necessary  
18 to view a thumb cache?

19 A No.

20 Q So based upon your evaluation of the two laptops, is it  
21 correct to say that anything that was found within the thumb  
22 cache would not be accessible to the users on or about  
23 April -- I'm sorry, May 24th, 2009?

24 A Correct, it wouldn't be readily available.

25 Q Now, you also talked about the CCleaner software. The

1 CCleaner software is software that is used to remove files  
2 from the computer, correct?

3 A It doesn't remove the files, what it does is it wipes  
4 the contents of the files so the files are still there.

5 Q So the files then sort of -- the existence of the, the  
6 file is there but anything that was a part of it is not?

7 A Exactly.

8 Q And within your experience as a computer forensics  
9 expert, are there legitimate purposes for having file wiping  
10 software?

11 A Sure, you could use it for legitimate purposes.

12 Q And typically file wiping software is used to delete  
13 information that is received from the internet, right?

14 A Not exclusively, but a large part of that, yes.

15 Q You touched upon in some of your testimony the word  
16 cookies. What's a cookie?

17 A A cookie is a small text file that is left on your  
18 computer when you visit an internet site.

19 Q Is that something that the user inputs into the  
20 computer?

21 A No.

22 Q Is that something that is automatically received from  
23 points on the internet?

24 A Yes.

25 Q And as part of those cookies, does that help or --

1     withdrawn. As part of those cookies, do they essentially  
2     provide the computer with information in redirecting the  
3     internet to certain sites where the user may find similar to  
4     other sites they visited?

5     A     No, the cookie is basically put on the computer by the  
6     server, by the outside presence and it's so that the next  
7     time that the computer user goes to that site, the cookie  
8     will identify that site as having been previously visited.  
9     So it's really not for the benefit of the computer user so  
10    much as for the website that it's visiting.

11    Q     And so in your testimony what you're saying is that if  
12    there's the presence of some of those cookies, then really  
13    that's done for the benefit of whatever websites are out  
14    there?

15    A     Right.

16    Q     And that helps those websites be able to more easily  
17    access or be accessed by users?

18    A     No, it's keeping track of it. My analogy of a cookie  
19    is if you go to a supermarket nowadays and they have customer  
20    appreciation benefits and you sign up, you get a little key  
21    tag and so every time you go to the store, you give them your  
22    key tag and they swipe it. What they're doing is they're  
23    taking information that you provide to them and now they're  
24    seeing your user preferences, the things you buy, that kind  
25    of thing, and they're storing that data and now they're

1 oriented, orient their services to what's going to benefit  
2 you. That's what a cookie does for the server is it  
3 basically identifies the computer that visited.

4 Q Okay. Are these cookies -- are these things that can  
5 help slow your computer down?

6 A Cookie won't slow your computer down, no.

7 Q But there are typically other software that may be  
8 installed by the internet from websites that are viewed that  
9 can slow your computer down?

10 A A virus can slow your computer down, yes.

11 Q And typically within those, as we've been discussing  
12 these file wiping software, that's legitimately used to help  
13 speed up the processing of the computer, correct?

14 A I wouldn't say that it's got anything to do with the  
15 speed of the computer, I would say more that it's got to do  
16 with the volume, in other words, you have a hard drive that  
17 is receiving a lot of files to it, those files are taking up  
18 space. If those files are considered to be extraneous by the  
19 user, you might want to get rid of those files.

20 Q So essentially it's used to help the user better  
21 perform on the laptop?

22 A Right.

23 Q You talked about at one point icons on the computer.  
24 You stated that typically these can be created in three ways,  
25 is that correct?

1 A At least three ways, yes.

2 Q What are those three ways?

3 A They can be installed by the system when the system  
4 first installs the operating system, icons can be placed on  
5 the computer. They can be added when you add a program, as  
6 you install the program it will ask you if you want to put a  
7 shortcut icon on the desktop. And if you say yes, then it  
8 will put an icon on the desktop. The user can also generate  
9 desktop icons if it's a folder, he can just right-click and  
10 place a new folder on the desktop. You can click and drag  
11 from another source and put it on the desktop.

12 Q Sometimes when you're downloading information from the  
13 internet, that can automatically prompt an icon on the  
14 desktop, correct?

15 A I don't -- not that I'm aware, what are you talking --

16 Q A shortcut?

17 A It's not going to automatically do it, it's going to  
18 ask you whether you want to put it there.

19 Q Typically when there's applications or information  
20 being downloaded from the internet, there will be a prompt on  
21 the computer, right?

22 A If you're installing a program, it will prompt you and  
23 ask you if you want to have a shortcut, yes.

24 Q And typically when we see these prompts, as you said,  
25 it will ask you, manufacturers and software engineers will



1 typically put in or premark those prompts, correct?

2 A It's got to be coded obviously, yes.

3 Q You discussed at some points the folder on the Toshiba  
4 laptop entitled New Folder 2?

5 A Yes.

6 Q Do you recall testifying that it could be visible to  
7 anyone?

8 A Yes.

9 Q When you said that it could be visible to anyone, by  
10 simply opening up the computer or turning it on, the contents  
11 of that folder is visible to anyone?

12 A The folder itself, the icon of the folder is on the  
13 desktop. The only way to see the contents of the folder  
14 would be to open that folder either by clicking the icon or  
15 going into the Windows Explorer and opening the folder.

16 Q So there was no password protection to access the  
17 content of New Folder 2?

18 A No, it's not password protected.

19 Q On the topic of passwords, at one point you noted that  
20 there was a prompt on the e-mail of the Toshiba, is that  
21 correct?

22 A Right.

23 Q And you recall testifying about a pop-up icon that was  
24 on the computer for the screen capture that you created?

25 A Right.

1 Q And that was asking for user name and a password?

2 A Right.

3 Q Do you recall the prompt box underneath the user name  
4 and password?

5 A Yes.

6 Q And you recall that that prompt box asked the user to  
7 remember my credentials?

8 A Right.

9 Q Okay. And that means that it's the computer saying,  
10 remember the information so that the next time you don't have  
11 to put it in, right?

12 A Right.

13 Q And if the individual did not uncheck that box while  
14 they were putting their credentials in, it means that there  
15 was no security to prohibit other individuals from accessing  
16 the e-mail in that, for instance?

17 A Well, because CCleaner removed all of the auto fill-in  
18 information so there would be no information for the computer  
19 to fill in automatically.

20 Q So as part of the file wiping software, CCleaner would  
21 also remove passwords and user names?

22 A In this case, it was checked to remove all those, the  
23 auto fill information.

24 Q You also recall testifying about a particular screen  
25 capture that you had created as part of your exam, which is a

1 text file listing user names and passwords?

2 A Yes.

3 Q And that text file of user names and passwords was  
4 attributable to several e-mail accounts?

5 A Correct.

6 Q And at least one of those e-mail accounts that had  
7 attributable user names and passwords was the jjenkins e-mail  
8 account?

9 A Yes.

10 Q That was the Road Runner account that you discussed  
11 earlier?

12 A I think they were all Road Runner, but yes.

13 Q And that text file was accessible on the computer?

14 A Yes.

15 Q And if someone were aware of that text file, that  
16 essentially would provide them with all of the credentials to  
17 access those particular e-mail accounts, correct?

18 A Correct.

19 Q That was the RR info text document, correct?

20 A Correct, yes.

21 Q There was at some point a number of photographs that  
22 you described which were -- appeared to be girls on a beach?

23 A Yes.

24 Q You described I think a series of about five or six or  
25 seven images?

1 A Seven pictures.

2 Q And did you classify those images as pornographic?

3 A No, I did not.

4 Q There was also a photograph image of Mr. Jenkins with a  
5 younger girl, do you recall testifying about that?

6 A Yes.

7 Q Did you classify that as pornographic?

8 A No.

9 Q Did you have any information whatsoever about the  
10 identity of the girl in that photograph?

11 A None whatsoever.

12 Q Any information of where that photograph was taken?

13 A No.

14 Q Any information when it was taken?

15 A I could find the create date, but no, I didn't record  
16 that.

17 Q You discussed on several occasions the user name of  
18 Joe. Did you find other user names on the computer?

19 A No.

20 Q So there was only one user name available on the  
21 Toshiba laptop?

22 A Correct.

23 Q And the user name is -- Well, withdrawn. Why don't you  
24 describe what a user name is generically as it relates to a  
25 computer.

1       A       A Windows computer can have multiple user accounts.  
2       When you first set up the program and even at a later date,  
3       you can create a specific user account for an individual. In  
4       this case, there was only one user account, it was labeled  
5       Joe. Some computers, for example home computers, people  
6       might want to have a user account for the adults and a user  
7       account for the children, and then the children can go into  
8       their user account and there might be specific controls as to  
9       where they can go on to the internet, would not be -- would  
10      not carry over to the user account for the adults.

11      Q       Okay. So essentially for the Toshiba laptop, is it  
12      fair to say then that anyone who turned on that computer was  
13      going to be routed through the Joe user name?

14      A       Yes.

15      Q       And that's because there were no other options on the  
16      Toshiba laptop?

17      A       Exactly.

18      Q       So the Joe user name in and of itself does not provide  
19      you with any information as to who the actual user is?

20      A       Correct.

21      Q       On the topic of any evidence of who the actual users  
22      are, does the forensic software that you used, whether it be  
23      the FTK or the EnCase, provide you with any evidence of who  
24      the actual user was of any of the e-mail accounts that were  
25      accessed in your study?

1 A No.

2 Q Does the presence of the informational text file  
3 including the user names and the passwords for all of the  
4 e-mails suggest to you that anyone who opened the computer  
5 would be capable of accessing e-mail if they knew of that  
6 document's existence?

7 A If they found that document, yes, that password would  
8 work for anyone.

9 Q Within particular e-mail programs, is it possible to  
10 change the settings to allow for the computer to periodically  
11 check e-mail for you, whether you're actively selecting check  
12 e-mail or not?

13 A Well, no. The way e-mail works, all of these are  
14 roadrunner.com accounts so when a person sends an e-mail to,  
15 there are three accounts, gjenkins, jenkinsselectric, and  
16 jjenkins70. When a person sends an e-mail to any of those  
17 three accounts, it will be routed to the Road Runner server,  
18 the e-mail server, and it will stay right on that server, so  
19 someone accessing say the jjenkins70 e-mail account, he can  
20 do it one of two ways. He can go to the internet and he can  
21 go to roadrunner.com, then he can enter his password -- or  
22 his e-mail address and the password and that will give him  
23 the e-mails. But those will only be visible to him on the  
24 server, they don't bring it down into his computer. In this  
25 case he was using a program called Windows Mail, and Windows

1 Mail allows you to configure multiple user, or multiple  
2 e-mail accounts and you give them the user account name and  
3 the password and then at that point whenever you go on the  
4 internet and you put in the security code, your user name and  
5 password, it will actually bring those e-mails from the  
6 server that's located presumably in Rochester to your hard  
7 drive. So that's the only reason I could see the e-mails  
8 with the actual date stamp, full e-mail located on the hard  
9 drive.

10 Q And if the e-mail application had been left open while  
11 the computer's running, will it continue to refresh on its  
12 own?

13 A It could if you have that Windows Mail program open and  
14 running and you've put in the user name and password, that  
15 could happen.

16 Q Did you find any evidence of the laptop being  
17 completely turned off within the last 24 hours prior to  
18 May 24th of 2009?

19 A No.

20 Q Would the FTK or the EnCase software be able to  
21 delineate if it had actually been turned off completely?

22 A If I looked specifically, yes, I didn't see any of that  
23 indication.

24 Q So from your study it appears, though, that the Toshiba  
25 laptop was probably left on, generally?

- 1 A It was probably in sleep mode.
- 2 Q Sleep mode means it's still on, correct?
- 3 A Right.
- 4 Q It's just sort of reserving power?
- 5 A It's reserving power, there's no file activity going
- 6 on.
- 7 Q You did testify briefly about Exhibit 3I, and you noted
- 8 five files ending in the -- ending in the term flv?
- 9 A Yes.
- 10 Q You referred to those as erotica. Is that
- 11 distinguishable from pornographic material?
- 12 A Yes, it is.
- 13 Q So that's not pornographic material then?
- 14 A No.
- 15 Q The one program that you referred to in some of your
- 16 testimony, breekelsey, do you recall that?
- 17 A It was a file name, yes.
- 18 Q And you recall that you performed a word search on the
- 19 Toshiba for it?
- 20 A Right.
- 21 Q At the time that you performed your evaluation, did it
- 22 appear as though the breekelsey file was present and
- 23 accessible on the Toshiba?
- 24 A No, it was not.
- 25 Q Do you have an evidence notebook up there?



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1 A I do not have a binder, no, sir.

2 Q Do you have the binder?

3 A I do not, no.

4 Q No.

5 MR. GOLDSMITH: May I approach?

6 THE COURT: You may.

7 Q Special Agent Braisted, I've opened up a evidence  
8 binder to Exhibit 3L for you, 3L as in Larry.

9 A Okay.

10 Q This is a series of screen captures that you discussed  
11 earlier, in what was a comparison of time?

12 A Right.

13 Q Is that correct?

14 A Yes.

15 Q In other words you were comparing the time of certain  
16 files being put onto the system versus other activity?

17 A Exactly.

18 Q On page 1 of Exhibit 3L, there are essentially three  
19 columns, correct?

20 A Right.

21 Q The left column is -- appears to be file names, right?

22 A Correct.

23 Q Middle column appears to be date and time stamps?

24 A Yes.

25 Q And the right column would be pathway?

1 A Right.

2 Q And the date and time stamps in the middle column,  
3 those reflect when the file was accessed?

4 A No, they were files created.

5 Q And there was several files that you discussed having  
6 been created at approximately 10:00 in the morning or shortly  
7 after it; do you recall that?

8 A Yes, uh-huh.

9 Q And that -- and the date in which those were created  
10 was February 22nd of 2009?

11 A Correct.

12 Q If you look at page 5 of 3L, this was an e-mail that  
13 you had discussed being accessed shortly after, is that  
14 correct?

15 A Correct.

16 Q And within the e-mail itself, there is a like a pop-up  
17 box, is it fair to say?

18 A Yeah.

19 Q And that's -- is that something that's created by your  
20 forensic equipment?

21 A No, what that is is, you see the e-mail, the major  
22 portion of it has -- well, when you look at an e-mail on your  
23 screen, you'll see the data on your screen, behind that data  
24 is what's called source code, and so when you right-click, it  
25 will give you a pop-up and you can show source code and

1     that's the box I have in here. This is source code for that  
2     particular e-mail.

3     Q     Okay. So in the source code for the e-mail, it has the  
4     title, return path, and then next to it is an e-mail address,  
5     correct?

6     A     Exactly, yep.

7     Q     And underneath that it says received and then it has a  
8     series of what appears to be maybe some e-mail servers?

9     A     There, yeah, IP addresses, basically that's the routing  
10    that the e-mail took to get from the person who sent it, Ron  
11    Travis, to get to the server at Road Runner, rr.com.

12    Q     Okay. And it -- then there's the e-mail address of  
13    jjenkins70@rochester.rr.com?

14    A     Exactly.

15    Q     And then beneath that is the date and time stamp?

16    A     Right.

17    Q     And that date and time stamp is February 22nd of 2009,  
18    the same day, correct?

19    A     Exactly.

20    Q     And that lists a time of 14:31:05, right?

21    A     Right.

22    Q     And that time is in military time, correct?

23    A     It's Greenwich mean time, yes.

24    Q     As part of your evaluations, you looked at the last  
25    time many of these files that you testified about had been

1     accessed, is that correct?

2     A     Yes.

3     Q     And as a great deal of the evidence that you discussed,  
4     you were talking about files being accessed in or about days  
5     or hours preceding May 24th of 2009, correct?

6     A     Correct.

7     Q     As part of your study of these materials, had you  
8     reviewed the Canadian forensic reports?

9     A     I -- the written reports, yes.

10    Q     Okay. Did you use that, the Canadian forensic reports  
11    in any way to assist you with your studies?

12    A     No.

13    Q     Did you use those reports in any way to double check  
14    the accuracy of your reports?

15    A     No.

16    Q     But you did review them?

17    A     I looked at them, yes.

18    Q     So essentially you reviewed them for no purpose?

19    A     I didn't have a need to look at them frankly, I stand  
20    by my report.

21    Q     All right. Do you recall any portions of the Canadian  
22    forensic report detailing the finding that none of the --  
23    none of the files had been accessed from the thumb drives  
24    after May 16th of 2009?

25    A     I don't recall that, no.

1 Q Now you testified that you had found approximately  
2 4,000 image files on the two flash drives?

3 A I don't think quite that many, I think that includes  
4 the Toshiba laptop, I think there were 3250 graphic files on  
5 the 4-gigabyte and then about 15 on the 8-gigabyte thumb  
6 drive.

7 Q So all told, between those devices, you found close to  
8 4,000 graphic images?

9 A Yes.

10 Q And those were only -- withdrawn. And those images  
11 were images that you determined to be pornographic?

12 A Right.

13 Q Do you recall the Canadian forensic report finding in  
14 the -- finding a number in the hundreds?

15 A No, I don't recall that.

16 MS. THOMSON: Your Honor, I'm going to object to  
17 this line of questioning. Number one, that examiner that  
18 made the determinations was here and that was the proper  
19 person to ask those questions to.

20 THE COURT: No, it's fair cross-examination, he's  
21 testified that he looked at the report so he's asking him  
22 what he recalls about the Canadian report. It's permissible.  
23 Go ahead.

24 MR. GOLDSMITH: Thank you.

25 Q Do you recall the Canadian forensic report concluding

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1     that there was no evidence of the files found on the two  
2     flash drives having passed through the Toshiba laptop?

3     A       I don't recall that, no.

4           THE COURT:  Counsel, I'm going to ask you to  
5     approach for a minute.

6           (At Side Bar.)

7           THE COURT:  One of the things I am going to insist  
8     on is that you have a good faith basis for these questions,  
9     that they're coming from the Canadian report and not things  
10    that you're just asking him does he remember.

11          MR. GOLDSMITH:  No, your Honor, I have obtained the  
12    forensic report and I'm referring to notes that I made on a  
13    portion of them, I do not anticipate many more if any  
14    questions --

15          THE COURT:  Okay.

16          MR. GOLDSMITH:  -- based on this.

17          THE COURT:  So you're saying you have a Canadian  
18    report saying there was only hundreds of images as opposed to  
19    thousands?

20          MR. GOLDSMITH:  Yes, based upon my review.

21          THE COURT:  Counsel, you want to be heard?

22          MS. THOMSON:  Number one, it's not correct, and  
23    number two, the witness who would have been the appropriate  
24    witness to talk to about that also testified that on the one  
25    form of media, he located 1600, and then, if the court

1 recalls, he indicated there's a saturation point, so if he's  
2 going to ask these questions --

3 THE COURT: These are misleading questions.

4 MR. GOLDSMITH: I don't find them to be misleading.

5 THE COURT: You don't, I do. Quite frankly, you  
6 know, just because you're reading the report and interpreting  
7 it some way, you know, there was testimony in this courtroom  
8 from the Canadian expert who said, you know, I looked at  
9 this, I hit a saturation point and I stopped and if you're  
10 using this number and saying that the Canadian said this is  
11 the number that we found, that's not accurate.

12 MR. GOLDSMITH: No, your Honor, that is the number  
13 that was put in their report.

14 THE COURT: But again, Counsel, that is not  
15 accurate with regard to the way you're asking these questions  
16 and asking this witness to say, you know, assuming that the  
17 Canadian report says there was only this many. That's not an  
18 accurate good faith question.

19 MR. GOLDSMITH: Your Honor, I, I do not want the  
20 court to think that I am intentionally misleading the jury or  
21 in any way attempting to run afoul of the court. If the  
22 court wishes, I will withdraw those questions.

23 THE COURT: I'm going to ask you again, is there a  
24 good faith basis for these questions based on the Canadian  
25 report that says that there was only a certain number of

1 images found.

2 MR. GOLDSMITH: Your Honor, I would not ask them if  
3 I did not have a good faith basis.

4 THE COURT: Okay, well, then I want to see the  
5 report where it says that there was only a certain number of  
6 images found.

7 MR. GOLDSMITH: Okay.

8 (Pause in Proceedings.)

9 MR. GOLDSMITH: Your Honor, he's talking about  
10 numbers of five images, five images, and I do recall that  
11 there was a -- that there was something I read from  
12 Mr. Wohlert, I think maybe in an affidavit or a warrant  
13 earlier discussing the number of 500 or so.

14 MS. THOMSON: It's loud.

15 MR. GOLDSMITH: I'm sorry. Continue to look  
16 through the rest of the report.

17 MS. THOMSON: Your Honor, so the court understands,  
18 the classification he's asking about is contained within Kip  
19 Wohlert's report because if the court recalls, he testified  
20 that he receives data from Harrington, from just the imaging  
21 process and he classifies that data, so the report that's  
22 being referenced there is not even the report that the  
23 Canadian testified to, this report is the classification, Kip  
24 Wohlert classified them into categories 1 through 6, and made  
25 those determinations, being one category.



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1 MR. GOLDSMITH: The charts.

2 MS. THOMSON: That's the classification.

3 MR. GOLDSMITH: Yeah. We have no child  
4 pornography, we have adult pornography, we have --

5 MS. THOMSON: Do you know which piece of media  
6 you're referring to?

7 MR. GOLDSMITH: The C4P was the -- these were the  
8 flash drives.

9 MS. THOMSON: Okay. The flash drives are line 66,  
10 22, the PNY is -- 4-gigabyte is in the Canadian report  
11 classified as 6622B1, and the 8-gigabyte is 6622B2 so which  
12 one are you looking at?

13 THE COURT: And was there a determination of number  
14 of photographs for those by the Canadian?

15 MS. THOMSON: The Canadians indicated on the  
16 4-gigabyte, 1,644 to date, and 13 movie clips.

17 THE COURT: To date meaning they went so far and  
18 stopped?

19 MS. THOMSON: He stopped.

20 THE COURT: Which he testified to.

21 MR. GOLDSMITH: Okay.

22 THE COURT: So again, those questions are  
23 misleading.

24 MR. GOLDSMITH: I apologize, your Honor, I'm  
25 reviewing these files, paperwork that I've been presented

1 looking at numbers, and I will then, in this case upon the  
2 showing from the government an explanation of the original  
3 files that they have, I will withdraw those questions.

4 THE COURT: Well, I think maybe a good way to  
5 handle this is, you can try and clean it up on redirect. I'm  
6 going to ask you to be cautious about the questions you're  
7 asking, okay, because they've been misleading, and I'll allow  
8 you to get into it on redirect and clean it up and if I feel  
9 it's necessary, I'll hear you about a curative instruction  
10 with regard to this issue because the way the questions were  
11 asked, you're suggesting that the reports from Canada only  
12 had, you know, a limited number of photographs and that's  
13 really not accurate. Okay.

14 MR. GOLDSMITH: I apologize, your Honor, I do not  
15 want the court to feel that I'm being misleading with my  
16 examination.

17 THE COURT: Well, I understand based on your  
18 explanation of how it could have happened so we're going to  
19 clean it up.

20 MR. GOLDSMITH: Thank you.

21 THE COURT: Okay.

22 (Open Court.)

23 Q I should be very brief with a couple of questions left.  
24 Special Agent Braisted, do you have any software capable  
25 within your experience as a forensic examiner that would

1 indicate to you who the exact user is of a device prior to  
2 your receipt of it?

3 A No.

4 Q Is there any way to determine based upon your  
5 examination who exactly accessed the e-mail accounts that  
6 you've discussed in your testimony?

7 A No.

8 Q Do you have anything in your -- withdrawn. Do you have  
9 any tools that would be able to accurately decipher for you  
10 the individuals who were able to access the materials on the  
11 thumb drives that you've testified about?

12 A No.

13 MR. GOLDSMITH: No further questions.

14 THE COURT: Okay, Counsel, redirect?

15 MS. THOMSON: Yes, your Honor.

16 REDIRECT EXAMINATION BY MS. THOMSON:

17 Q When the cross-examination began, you were asked some  
18 questions about that system volume information; do you recall  
19 those questions?

20 A Yes.

21 Q And you indicated that's not accessible, it would not  
22 be accessible to the user?

23 A Right.

24 Q Even if it's not accessible to the user at that time,  
25 does it show that at some time, that images were accessible

1 and on that Toshiba?

2 A Absolutely.

3 Q I want to show you Exhibit 3N, please, I'll approach  
4 handing the exhibit binder, 3N. N like Nancy. Looking at  
5 Exhibit 3N, if you could just briefly tell us what 3N, what  
6 Exhibit 3N is?

7 A 3N shows contents of the 4-gigabyte thumb drive,  
8 specifically the contents of the folder 052209, and it's  
9 highlighting a file named elena038.jpg.

10 Q And does that indicate the date and location where that  
11 file was at, at some point resided?

12 A It shows that it was created on the 4-gigabyte thumb  
13 drive on May 22nd of 2009 at 10:25 p.m.

14 Q And did you find evidence of that particular image on  
15 the Toshiba?

16 A I found the file name and the folder name in a panel on  
17 the Toshiba, yes.

18 Q And then that file was on the 4-gigabyte thumb drive?

19 A Exactly.

20 Q What determination did you make about it both having  
21 evidence on the Toshiba and having presence on the 4-gigabyte  
22 as noted on 5/22/09 at 10:25 p.m.?

23 A Well, it indicates to me that it was on the Toshiba  
24 laptop and then it was moved over to the 4-gigabyte thumb  
25 drive.

1 Q Was that on May 22nd, 2009?

2 A At 10:25, exactly.

3 Q You were also asked about Exhibit 3I, so if you could  
4 turn to Exhibit 3I, please. And I believe if I recall your  
5 testimony, Exhibit 3I, the first page, that shows the date  
6 that New Folder 2 was created and saved to the desktop user  
7 Joe, is that correct?

8 A Correct.

9 Q And then immediately thereafter, can you tell us, was  
10 it those five videos, the 13, 14, 15, 29, and 30.flv that  
11 were immediately also saved to that New Folder 2?

12 A Exactly.

13 Q And those were files as you mentioned on  
14 cross-examination that were child erotica?

15 A Correct.

16 Q And so when you say child erotica, could you just  
17 describe that in relation to child pornography?

18 A Child erotica would be depicting children, minor under  
19 the age of 18 displaying themselves but it doesn't reach the  
20 level of child pornography. So the person is clothed or is  
21 not gratuitously displaying their genitalia.

22 Q And after -- did you watch all the videos together?

23 A Yes, I did.

24 Q And together what's their total length?

25 A I believe they were just short of 33 minutes in length.

1 Q And at 33 minutes after the New Folder 2 is saved to  
2 the user, what happened?

3 A An e-mail was created on the hard drive.

4 Q And by created, does that mean that e-mail was accessed  
5 by the user?

6 A Exactly.

7 Q And that e-mail was addressed to Joe Jenkins?

8 A Yes.

9 Q So about 33 minutes after New Folder 2 was created,  
10 that e-mail is accessed?

11 A Correct.

12 Q And in between there are five child erotica videos  
13 totaling almost 33 minutes in length that are saved at that  
14 time?

15 A Correct.

16 Q You were asked some questions about whether or not you  
17 reviewed the Canadian classification report with regard to  
18 the items examined in this case?

19 A Yes.

20 Q Are you aware if that Canadian report also noted the  
21 presence of child pornography on the media examined?

22 A I believe it did note some child pornography, yes.

23 Q With regard to that 4-gigabyte thumb drive, you were  
24 asked some questions on cross-examination; are you aware if  
25 the Canadians also found child pornography on the thumb

1 drive?

2 A I really don't remember specifically, I think that it  
3 was, they did find child pornography on the thumb drive, yes.

4 MS. THOMSON: One moment, your Honor. That's all,  
5 your Honor.

6 THE COURT: Okay. Any recross? Or -- yes.

7 MR. GOLDSMITH: One moment, your Honor.

8 (A discussion was held off the record between  
9 Mr. Goldsmith and the defendant.)

10 MR. GOLDSMITH: No, I have no further questions.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you, Judge.

13 THE COURT: All right. Safe travels home.

14 THE WITNESS: I appreciate it.

15 (The witness was excused.)

16 THE COURT: Okay, ladies and gentlemen, it's 12:24,  
17 I wanted to make sure that we completed that witness before  
18 we took our lunch break. We will take our lunch break now,  
19 I'm going to ask you to be back in the jury room at 1:30, so  
20 we can continue with proceedings. Please don't discuss the  
21 case with anybody, don't read, listen, or view anything  
22 related to the case. If anybody approaches you, tries to  
23 talk to you about this case, I need to know about it  
24 immediately. Enjoy your lunch.

25 (Jury Excused, 12:24 p.m.)

1 THE COURT: Okay. We're outside the presence of  
2 the jury. Government, how many more witnesses do you  
3 anticipate?

4 MS. THOMSON: Four very brief witnesses.

5 THE COURT: Four witnesses. Okay. And what we'll  
6 do is I'll have my clerks put the jury charge, proposed jury  
7 charge and verdict sheet on your tables over the lunch hour,  
8 we'll finish those witnesses and you said they're all brief?

9 MS. THOMSON: Very.

10 THE COURT: Okay. Well, we'll finish up that  
11 testimony and what I -- depending on what time it is, I'm  
12 thinking I may excuse this jury for the day and let them get  
13 home because the snow has continued to come, and give them a  
14 lengthy period of time to make it home, but we'll see what  
15 time it is. And then we'll stay here and do our jury charge  
16 conference, and again, depending on what time it is, I'll  
17 allow you to sum up in the morning instead of this afternoon.  
18 As we go forward, just seeing what's going on, depending upon  
19 what defense counsel decides to do, okay.

20 MR. GOLDSMITH: Thank you.

21 THE COURT: All right. Enjoy your lunch.

22 THE CLERK: Court's in recess.

23 (Luncheon recess, 12:25 p.m. to 1:33 p.m.)

24 (Open Court, Jury Out.)

25 THE COURT: Okay. We're in the courtroom outside



1 the presence of the jury, government prepared to call their  
2 next witness?

3 MS. THOMSON: Yes, your Honor.

4 THE COURT: Okay. Mr. Goldsmith, you're all set?

5 MR. GOLDSMITH: Yes.

6 THE COURT: Okay. Please bring the jury in.

7 (Jury Present, 1:34 p.m.)

8 THE COURT: Okay. The record should reflect we  
9 have all the ladies and gentlemen of the jury, hopefully  
10 enjoyed your lunch, and we're prepared to hear the  
11 government's next witness.

12 MS. CARROLL: Your Honor, at this time the  
13 government would seek permission to recall Special Agent Chad  
14 Willard to admit an exhibit that we realize we omitted during  
15 his testimony originally.

16 THE COURT: Okay, come on up. Special Agent  
17 Willard, you're still under oath, okay?

18 THE WITNESS: Understand.

19

20 C H A D W I L L A R D , recalled as a  
21 witness and being previously duly sworn, testifies  
22 as follows:

23 DIRECT EXAMINATION BY MS. CARROLL:

24 Q Special Agent Willard, you testified previously that  
25 you retrieved a number of items of physical evidence from

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1 Detective Constable Kip Wohlert; was that your testimony  
2 earlier?

3 A Yes, it was.

4 Q Special Agent Willard, I'm handing you what's been  
5 marked for identification as Government's Exhibit 13. Do you  
6 recognize Government's 13?

7 A Yes, I do.

8 Q What is it?

9 A Ontario Provincial Police property report that was  
10 provided to me at the time that I met Kip Wohlert at the Port  
11 of Lansdowne, Ontario, Canada.

12 Q How are you able to recognize that?

13 A By the items listed in the property sheet as well as my  
14 name and signature written at the bottom.

15 Q And are you the person who affixed your name and  
16 signature to that form?

17 A Yes.

18 Q And is the date listed on that form accurate as to the  
19 date that you signed the form?

20 A Yes, April 1st, 2011.

21 MS. CARROLL: Your Honor, permission to admit  
22 Government's Exhibit 13?

23 THE COURT: Any objection?

24 MR. GOLDSMITH: Brief voir dire.

25 THE COURT: Go ahead.

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1           VOIR DIRE EXAMINATION BY MR. GOLDSMITH:

2           Q       Special Agent Willard, the signature at the bottom of  
3           the page is your signature?

4           A       Yes, sir.

5           Q       And do you recall when you signed it?

6           A       April 1st, 2011.

7           Q       Was this document in your possession since April 1st of  
8           2011?

9           A       A copy of this document, the original went back to the  
10          Ontario Provincial Police.

11                 MR. GOLDSMITH: No further questions, no objection.

12                 THE COURT: It will be received.

13           CONTINUED DIRECT EXAMINATION BY MS. CARROLL:

14          Q       Special Agent Willard, at the date you -- can you go  
15          ahead and publish 13. The items of physical evidence  
16          reflected on 13, could you read those, please?

17          A       Looks like line item 1 is Toshiba laptop; line item 2,  
18          Compaq laptop; line item 3, Olympus camera and cards; line  
19          item 4 is Verizon cell phone; and line item 5 are three jump  
20          drives.

21          Q       Are those the same items that are reflected on the  
22          Homeland Security custody receipt that was previously  
23          admitted as Government's Exhibit 12?

24          A       Yes, they are.

25          Q       And have you had the opportunity to compare the serial

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1 numbers on this property receipt form to those on the items  
2 listed on Government's Exhibit 12, your property receipt?

3 A Yes, I have.

4 Q Do they correspond?

5 A Yes, they do.

6 Q What is the date that you signed this evidence out?

7 A April 1st, 2011.

8 Q Who did you receive the evidence from?

9 A Kip Wohlert, detective sergeant with the Ontario  
10 Provincial Police.

11 Q Where was that evidence transfer conducted?

12 A The Lansdowne, Ontario port of entry, Canada.

13 Q What did you do after taking custody of the evidence?

14 A I brought it into the United States into the Thousand  
15 Islands Alexandria Bay port of entry and locked it in a  
16 DHS-approved vault safe in our office.

17 MS. CARROLL: No further questions.

18 THE COURT: Any cross?

19 MR. GOLDSMITH: Sure.

20 CROSS-EXAMINATION BY MR. GOLDSMITH:

21 Q Special Agent Willard, on Exhibit 12, that is the  
22 voucher that you created, correct?

23 A Correct.

24 Q It does not include a notation for the memory card  
25 associated with the camera, correct?

1 A Correct.

2 Q Did you have the memory card that was associated with  
3 the camera at the time that you took possession and created  
4 Exhibit Number 12?

5 A Yes, and it's still in the camera today.

6 Q Were there any notations anywhere in Exhibit Number 12  
7 or elsewhere created by your office that indicate possession  
8 of the memory card in the camera?

9 A No, it's included in the camera, inside.

10 Q Were you able to review the serial number at any point  
11 from the card that was enclosed in the camera?

12 A No, I didn't review serial number from the Olympus  
13 digital camera.

14 MR. GOLDSMITH: No further questions.

15 MS. CARROLL: No redirect, your Honor.

16 THE COURT: You may step down. Thank you.

17 (The witness was excused.)

18 MS. THOMSON: Your Honor, could we approach.

19 THE COURT: You may.

20 (At Side Bar.)

21 MS. THOMSON: I don't know if the court had an  
22 opportunity to view, AUSA Ed Broton just entered the  
23 courtroom, he handed me the following piece of paper that I  
24 wanted to bring to the court's attention. It relates to the  
25 next witness who is scheduled to testify and that is Josh

1 Findley. The court may recall we had intended, noticed Roy  
2 Shepherd to be a witness to be testifying. Roy Shepherd had  
3 a medical emergency, couldn't be here and if you recall we  
4 were able to get Josh Findley to come and testify in his  
5 place because they were both involved in the investigation.  
6 As soon as we realized that we were going to be doing a  
7 substitution of witnesses, we did a *Giglio* request and did  
8 come back positive one incidence and that incidence is  
9 Officer Findley alleged -- it was alleged alcohol use by him  
10 during office hours. I don't believe it would go to his  
11 credibility at this point, I did want to disclose it, let the  
12 court know so that the court can make that ruling in that  
13 regard but we're disclosing it. I don't believe it's the  
14 type of evidence that the court should admit for  
15 cross-examination.

16 THE COURT: Counsel?

17 MR. GOLDSMITH: I --

18 THE COURT: You haven't seen this, haven't had a  
19 chance to digest it or anything.

20 MR. GOLDSMITH: Not at all.

21 THE COURT: Why don't you go ahead, do you have a  
22 copy of it?

23 MS. THOMSON: I was handed -- it was Mr. Broton's  
24 impression we had already passed this witness so he didn't  
25 realize, we just received it.

1 (Mr. Goldsmith reviewing document.)

2 MR. GOLDSMITH: Do we have any information as to  
3 when this happened? Because the note said it was a violation  
4 of probationary activity which might indicate that it was  
5 when he was first starting out.

6 MS. THOMSON: That's what I would believe to be,  
7 he's been an agent for at least I believe eight years.

8 MR. GOLDSMITH: Then in light of the circumstances,  
9 your Honor, I don't think it's relevant to the testimony.

10 THE COURT: Not to credibility, unless there's  
11 something else in the direct examination that comes,  
12 something that there's some issue that it may become relevant  
13 and I'll hear you.

14 MR. GOLDSMITH: I'll reserve the opportunity if it  
15 comes up in testimony.

16 THE COURT: If there's anything that, you know, as  
17 you're listening to the direct and preparing to do a  
18 cross-examination, if you have some application where you  
19 think it may become relevant, you let me know.

20 MR. GOLDSMITH: Thank you.

21 MS. THOMSON: Thank you.

22 (Open Court.)

23 MS. THOMSON: The government calls to the stand  
24 Special Agent Joshua Findley.

25 THE CLERK: Good afternoon. Step up here. State

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1 your full name, spell it for the record, please.

2 THE WITNESS: Josh Findley, F-i-n-d-l-e-y. Joshua.

3

4 J O S H U A F I N D L E Y , called as a  
5 witness and being duly sworn, testifies as follows:

6 DIRECT EXAMINATION BY MS. THOMSON:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Could you please introduce yourself to the members of  
10 the jury?

11 A My name's Josh Findley, I'm a special agent for the  
12 Department of Homeland Security and I'm stationed in  
13 Portland, Oregon.

14 Q Did you have to travel to Syracuse from Portland?

15 A I did yesterday.

16 Q Did your luggage arrive?

17 A My luggage did not make it and so I'm still in my same  
18 clothes from yesterday so I apologize for my appearance.

19 Q How long have you been a special agent in Portland?

20 A I've been a special agent for a total of about 18 years  
21 now and about 14 of it in Portland.

22 Q What do you do as a special agent?

23 A As special agent, I investigate federal felony crimes.  
24 I spent about eight years of that time investigating sex  
25 crimes.



1 Q Does that include child exploitation cases?

2 A Yes.

3 Q And child pornography cases?

4 A Yes.

5 Q Are you familiar with a video series called Vicky?

6 A Yes, I am.

7 Q And do you know what I mean by video series?

8 A Yeah. We refer to child pornography series, and when  
9 we get a case and we have images of child pornography, they  
10 are submitted to the National Center for Missing and  
11 Exploited Children and the way they catalog that is by  
12 victim. And so we refer to each victim in all the videos or  
13 photographs that victim is in as a series of child  
14 pornography. And so when you say the Vicky series, it's a  
15 series of images and videos that all relate to one victim,  
16 even though they happened over different periods of time.

17 Q And is there a place that keeps track of all of the  
18 images and videos that are distributed or found to have been  
19 distributed, possessed, received, of series?

20 A Yeah, and so the National Center for Missing and  
21 Exploited Children is the agency that most law enforcement  
22 agencies, both federal and local agencies when they get  
23 images of child pornography, they submit those images to the  
24 National Center for Missing and Exploited Children. The  
25 National Center doesn't actually keep and maintain those

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1 images, but what they do keep and maintain is what's called a  
2 hash value which is like a digital fingerprint that each  
3 photograph has a unique, or video has a unique fingerprint so  
4 to speak. And so they'll catalog those fingerprints and so  
5 when an agency submits videos or images, then the National  
6 Center for Missing and Exploited Children can tell you what  
7 victim, if that victim is known or if it's an unknown victim  
8 and so that's the way we catalog our victims in these cases.

9 Q Does law enforcement together with using the resources  
10 of the National Center for Missing and Exploited Children try  
11 to locate the victims that are portrayed in the child  
12 pornographic image and videos that are recovered?

13 A Yes. Our agency as well as other agencies, when we  
14 find unknown victims or when we find images or videos that we  
15 haven't ever seen before, you know, we embark on efforts to  
16 try to identify who that child is by looking at maybe clues  
17 in the background, listening to voices, the languages that  
18 are used, you know, we've even gone so far as to try to read  
19 bar codes of bags of chips to see if we can tell where it was  
20 sold, all in furtherance of just identifying children that  
21 are in a bad situation so we can get them out of it.

22 Q Were you involved in the investigation involving Vicky?

23 A Yes, I was.

24 Q Have you seen video files of Vicky in other  
25 investigations?

1 A Yes, I've seen it in probably hundreds of  
2 investigations.

3 Q As part of your involvement in that investigation, did  
4 you meet the young girl who is portrayed in the video?

5 A I did.

6 Q Is her real name Vicky?

7 A No, it's not.

8 Q And don't identify her by name, please. How did it  
9 come to pass that you met her?

10 A It was one of those things like I explained earlier  
11 that there was a detective in Toronto who had tried to  
12 identify who she was because it had been a child pornography  
13 series that he had seen a lot of and he developed clues that  
14 she was in the northwest United States and requested our  
15 office's assistance in finding her. We were actually able to  
16 end up tracking her down through some different  
17 circumstances, but she had reported sexual abuse by her  
18 father and based on that report, then we were able to match  
19 her up with the series and these images that we were looking  
20 to identify the child. Based on that, I interviewed her and  
21 was able to confirm that it was her in these videos.

22 Q How old was she when you met her?

23 A She was 17 when I met her.

24 Q Did you review prior to your testimony today video  
25 files that held the title 9Y0 Vicky stripping and sucking,

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1 and then continues, did you review those video files?

2 A Yes, ma'am.

3 Q Did you review them in the office of the United States  
4 Attorney's office?

5 A Yes, ma'am.

6 Q And after reviewing them, were you able to see videos  
7 that you identified as the investigation you were involved  
8 with, the Vicky investigation?

9 A Yes, ma'am, it was her.

10 Q At this time I'm handing the witness Government's  
11 Exhibit 4C and 4G and I'm going to ask you if you recognize  
12 4C and 4G.

13 A I do.

14 Q Are those the disks that you reviewed in the United  
15 States Attorney's office?

16 A They are.

17 Q On those disks, were you able to see a video of Vicky?

18 A Yes.

19 Q On each of those disks?

20 A Yes, ma'am.

21 Q And is that the same child you investigated with regard  
22 to the images and videos of her having been involved in your  
23 investigation?

24 A Yes, ma'am, I recognize those videos as being produced  
25 in eastern Washington.

Joshua Findley - Cross

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1 Q And if we could see a clip. We're going to show a clip  
2 but it's the first portion that does not -- it contains the  
3 image fully clothed.

4 (A video clip from Government's Exhibit No. 4C  
5 was played.)

6 Q Is that Vicky?

7 A That is, that is her, and all the videos on both CDs  
8 were the same video.

9 Q And you met her when she was 17?

10 A Yes.

11 Q Were you able to view that video and see that that's  
12 the same girl that you met?

13 A Yes, absolutely.

14 MS. THOMSON: I have no further questions.

15 CROSS-EXAMINATION BY MR. GOLDSMITH:

16 Q Agent Findley, you were able to actually meet the  
17 subject of that video?

18 A Yes, sir.

19 Q Personally?

20 A Yes, sir.

21 Q And as part of your investigation, you were able to  
22 determine that that was in fact the same individual that was  
23 depicted in the movie?

24 A Yes, sir.

25 Q And you used that by additional investigative

1 techniques other than simply interviewing the subject?

2 A Yes, sir.

3 Q So in other words the identification was corroborated  
4 by other evidence?

5 A Yes, sir.

6 Q And you said you met her when she was 17 years old, is  
7 that correct?

8 A Yes, sir.

9 Q And at the time were you able to establish her age  
10 relative to when the video was produced?

11 A Yes, she was 10 and 11 when the videos were produced.

12 MR. GOLDSMITH: No further questions.

13 THE COURT: Anything further?

14 MS. THOMSON: Yes, your Honor.

15 REDIRECT EXAMINATION BY MS. THOMSON:

16 Q There were more than one video of Vicky?

17 A There were about 13 videos in total that were created.  
18 Since that time they've been distributed over the internet  
19 and they've been broken up into thousands of different videos  
20 and images and still shots just by different individuals who  
21 have collected these and taken parts out.

22 Q So when you indicated that you were able to view the  
23 video and identify that video as the same girl that you met  
24 when she was 17, had you had the opportunity to review all  
25 the videos --

Joshua Findley - Redirect

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1 A I believe --

2 Q -- in your possession at that time?

3 A Oh, yes, ma'am.

4 Q And that would be more than the one that you saw today?

5 A Yes, ma'am.

6 THE COURT: Anything further?

7 MR. GOLDSMITH: No.

8 THE COURT: Counsel? Thank you, sir.

9 THE WITNESS: Thank you.

10 THE COURT: You may step down. Good luck getting  
11 back to Portland.

12 THE WITNESS: Thank you, hopefully I'll have my  
13 luggage in time.

14 THE COURT: Maybe you can catch it on the way back.

15 (The witness was excused.)

16 MS. THOMSON: Government calls to the stand Special  
17 Agent Chris McClellan.

18 THE CLERK: Good afternoon. State your full name  
19 and spell it for the record, please.

20 THE WITNESS: Christopher McClellan,  
21 M-c-C-l-e-l-l-a-n.

22

23 C H R I S T O P H E R M c C L E L L A N,  
24 called as a witness and being duly sworn, testifies  
25 as follows:

1           DIRECT EXAMINATION BY MS. THOMSON:

2           Q       Can you please introduce yourself to the members of the  
3           jury?

4           A       Yes, my name's Christopher McClellan, I'm a special  
5           agent with Homeland Security, Homeland Security  
6           Investigations.

7           Q       How long have you been a special agent with Homeland  
8           Security Investigations?

9           A       I've been a special agent since 2005.

10          Q       What are some of your duties as a special agent?

11          A       Some of my duties as special agent, I do more of a  
12          complex criminal investigations, I had done, worked in  
13          narcotics unit where -- doing international narcotics  
14          smuggling, money smuggling, in and out of the country. I  
15          worked smaller resident agents office which we basically  
16          handled anything that came our way, money, drugs, child  
17          exploitation, pretty much everything that our agency covers.

18          Q       Do you also do cases involving child pornography?

19          A       Yes, I do.

20          Q       Did you become involved in a case regarding a KP Nancy?

21          A       Yes, I did.

22          Q       How did you become involved in that case?

23          A       I became involved in that case in August of 2010. We  
24          have our -- one of our offices, HSI office in Los Angeles,  
25          California had contacted my office in New York and basically



1 they had an undercover operation in which they received --  
2 they were on a board where there was suspected child  
3 pornography being traded and they had undercover e-mail  
4 persona account set up, they were chatting with suspected  
5 people trading child pornography and they had received  
6 numerous videos of child pornography to their undercover  
7 account. As part of their investigation, they started to  
8 realize that one of the girls, one of the victims in the  
9 video they were able to trace back to the New York area which  
10 was the area that I was working.

11 Q What part of New York?

12 A The victim they believed came back to Westchester  
13 County, New York, actually town of Mount Kisco, New York.

14 Q And so as a result of that location being narrowed  
15 down, what did you do, how did you become involved?

16 A I became involved, basically they were able to trace  
17 back an IP address which is basically the internet address  
18 being used by certain e-mail accounts, using that IP address  
19 they were able to locate an e-mail address that had some of  
20 the markings, the girl, the victim in the video had an  
21 embedded image in the video KP432, using that embedded image  
22 they were able to do searches on the internet for any other  
23 websites, e-mail addresses that came back with KP432. They  
24 actually found a MySpace account which they sent me the  
25 information on and I subpoenaed MySpace and Yahoo e-mail

1 address, both MySpace and her Yahoo account had pictures  
2 which looked identical to the girl in the video, so I took  
3 those images of the video and girl from the MySpace accounts,  
4 I made screen shots of those videos, I went to local area,  
5 the school where the -- where I believed that the victim  
6 lived and I identified, I was able to identify her by showing  
7 the pictures to the school resource officer who positively  
8 identified the girl as a student in the school.

9 Q Was that around August of 2010?

10 A Yes, it was.

11 Q Did you have the opportunity to meet the person that  
12 was depicted in the KP Nancy video?

13 A Yes, I did.

14 Q How old was she when you met her?

15 A When I met her in August of 2010 she was 15 years old.

16 Q And were you able to determine when the video of her,  
17 how old she was when it was created?

18 A She said she made the video approximately six months  
19 earlier so that would have put her at age 14.

20 Q We're going to show you a very brief clip from  
21 Exhibit 3H that would be clip 1, if we could just hold it.  
22 Do you recognize the clip that's shown before you?

23 A Yes, I do.

24 Q And who, without using the name, who is depicted in  
25 this image?

Christopher McClellan - Direct

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1 A The girl depicted in this image is what -- her series  
2 became known as KP Nancy.

3 Q When you met her she was 15?

4 A Yes.

5 MS. THOMSON: I have nothing further.

6 MR. GOLDSMITH: No questions.

7 THE COURT: Thank you, sir.

8 THE WITNESS: Thank you.

9 THE COURT: You may step down.

10 (The witness was excused.)

11 MS. THOMSON: United States calls its next witness  
12 and that is Justin Myers.

13 THE CLERK: Good afternoon, step up here. Please  
14 state your full name, spell it for the record, please.

15 THE WITNESS: Justin Myers, and it's J-u-s-t-i-n,  
16 M-y-e-r-s.

17

18 J U S T I N M Y E R S , called as a  
19 witness and being duly sworn, testifies as follows:

20 DIRECT EXAMINATION BY MS. THOMSON:

21 Q Good afternoon. Could you please introduce yourself to  
22 the members of the jury.

23 A Sure. Justin Myers, Homeland Security Investigations,  
24 I'm a special agent, been there for about 10 years.

25 Q What do you do with Homeland Security Investigation?

1       A       I work criminal investigations, specifically I worked  
2       child exploitation investigations for approximately six  
3       years.

4       Q       Did you become involved in an investigation with regard  
5       to an image series by the name of Green Bath?

6       A       Yes.

7       Q       And when I say an image series Green Bath, do you  
8       understand what that means?

9       A       Yes, I do.

10      Q       And what is that?

11      A       A series is used to describe a sequence of images,  
12      videos, that belong to a particular victim.

13      Q       How did you become involved in the series Green Bath?

14      A       During 2008, I was conducting a child exploitation  
15      investigation involving the distribution of child pornography  
16      through interstate commerce. During the investigation I  
17      executed a search warrant at a residence, which revealed the  
18      presence of production of child pornography. Upon further  
19      investigation, I was able to identify the victim of that  
20      child pornography as a prepubescent female who was living at  
21      the residence where the search warrant was conducted and thus  
22      was able to submit those -- that evidence and which became  
23      part of the Green Bath series.

24      Q       When you say submit that evidence, who did you submit  
25      it to?

Justin Myers - Direct

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1 A To NCMEC.

2 Q Is that the National Center for Missing and Exploited  
3 Children?

4 A Yes.

5 Q And then does the National Center for Missing and  
6 Exploited Children keep track of any image or video file that  
7 comes up hash matching to Green Bath?

8 A Yes.

9 Q I'm handing you at this time what's previously been  
10 marked as Government's Exhibit 3C and 4B and I'm going to ask  
11 you if you recognize what these are.

12 A Yes, I do.

13 Q Did you have the opportunity prior to your testimony to  
14 go to the United States Attorney's office and review graphic  
15 files contained on those exhibits?

16 A Yes, I did.

17 Q And when you reviewed them, did you see images that  
18 correspond to the Green Bath series?

19 A Yes, I did.

20 Q Images that are contained in Government's Exhibit 3C  
21 and 4B, is that of the victim that you met pursuant to your  
22 investigation on Green Bath?

23 A Yes.

24 Q How old was the victim when you met her?

25 A Eleven years old.

Justin Myers - Direct

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1 Q And were you able to determine how old she was when the  
2 images were taken of her?

3 A Yes, between the ages of 8 and 10.

4 Q I'm now handing you what's been previously marked as  
5 Government's Exhibit Number D and I'm going to ask you --  
6 that would be 3D, and the jury is free to open up their  
7 binders to 3D if they wish. Do you recognize Exhibit 3D?

8 A Yes.

9 Q And what is depicted in Exhibit 3D, without using a  
10 real name?

11 A It's the victim from Green Bath series.

12 Q That's the child that you met?

13 A Yes.

14 Q And she was 11 when you met her?

15 A Yes.

16 MS. THOMSON: I have no other questions.

17 MR. GOLDSMITH: No questions.

18 THE COURT: No cross, okay. Thank you, sir, you  
19 may step down.

20 THE WITNESS: Thank you, your Honor.

21 (The witness was excused.)

22 MS. THOMSON: At this time, your Honor, the  
23 government calls to the stand Mike Wojeski.

24 THE CLERK: Good afternoon, sir. Can you state  
25 your full name and spell it for the record, please.

Michael Wojeski - Direct

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1 THE WITNESS: Michael J. Wojeski, W-o-j-e-s-k-i.

2

3 M I C H A E L J . W O J E S K I ,

4 called as a witness and being duly sworn, testifies

5 as follows:

6 DIRECT EXAMINATION BY MS. THOMSON:

7 Q Good afternoon. Could you please introduce yourself to  
8 the members of the jury.

9 A I'm Corporal Michael J. Wojeski from the Cayuga County  
10 Sheriff's Department.

11 Q How long have you worked for the Cayuga County  
12 Sheriff's Department?

13 A Fourteen years.

14 Q What do you do?

15 A I am a shift supervisor and phone system administrator  
16 for the entire facility.

17 Q And is that the Cayuga County Jail?

18 A Correct.

19 Q In the 14 years that you've been with the Cayuga County  
20 Sheriff's Department, can you tell us some of the positions  
21 you've held?

22 A I started as a regular corrections officer line staff,  
23 and then approximately three years ago I took the test and  
24 was promoted to corporal shift supervisor, so I now run the  
25 jail for my shift which is 2 to 10 in the evenings.

1 Q Corporal Wojeski, you also mentioned that, some  
2 responsibilities as it relates to phones, could you tell --

3 A Correct.

4 Q -- tell us about that?

5 A I'm the phone system administrator, every outgoing  
6 inmate phone call in the facility has to be run through the  
7 digital system, Global Tel is the company's name. I do all  
8 the maintenance on the computers, not the actual repair but  
9 software updates and if someone's getting calls that they do  
10 not want, I can go to the system and block it so that no  
11 phone calls may be made to that number anymore.

12 Q If there were a repair that were needed for the phone  
13 system, would you be notified?

14 A Yes, I'd be notified and then I would contact the  
15 actual repair person to come in.

16 Q How long have you held that position, the phone  
17 administrator?

18 A Approximately five years.

19 Q In 2009 you were the phone administrator?

20 A Yeah.

21 Q Do inmates at Cayuga County Jail have access to  
22 telephones?

23 A Yes.

24 Q How do they have access, can you describe it?

25 A There's -- depending on the housing units they're in,



1     there's anywhere from one pay phone to four pay phones in  
2     each housing unit, and they have access when they are not in  
3     lock downs, lock downs during shift change or emergencies  
4     where they have to go to their cells. And normal operations,  
5     they're out and walking around, and at any time if there's a  
6     phone open, they may walk over, pick it up and make an  
7     outgoing call.

8     Q     Does the facility have a mechanism to record the  
9     telephone calls that are made --

10    A     Yes.

11    Q     -- by the inmates?

12    A     Yes.

13    Q     Can you describe that mechanism?

14    A     It's a digital system, every phone call goes through  
15     the digital system and it records their personal  
16     identification number, the phone that they're calling from,  
17     the phone number that they are calling, the date and time of  
18     the call, and an audio recording if the call is completed and  
19     the outside partner -- or outside party, excuse me, accepts  
20     the charges.

21    Q     In October of 2011, was that system in place?

22    A     Yes.

23    Q     Are you familiar with how the system works?

24    A     Yes.

25    Q     Could you just explain how your system works?

Michael Wojeski - Direct

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1       A       The -- when an inmate wants to make a call, he goes to  
2       the phone, like I said, he picks up the phone, enters his  
3       personal identification number, it has a couple prompts  
4       before that connects, it will send a digital to the receiving  
5       party to tell them that they have a phone call, the inmate's  
6       name, the location, and it will give them prompts to accept  
7       the charges, deny the charges, block the number, add money to  
8       the prepay account, and they must accept, deny, or do one of  
9       the prompts.

10      Q       Where does that inmate pin number come from?

11      A       Every inmate when they enter the facility is given a  
12      pin number. The pin number is used for the telephone,  
13      commissary, so they can order food, hygiene products, and  
14      it's so that our system can keep track of who's who because  
15      some names are so close that we need a number and a name to  
16      separate who's who.

17      Q       Using the name and number system, that's how you  
18      separate inmate calls?

19      A       Correct.

20      Q       And did you receive training on that phone system by  
21      the manufacturer of the phone system?

22      A       Yes.

23      Q       When a call is made by an inmate, how is that paid for?

24      A       The called party would have to set up a prepaid  
25      account, usually with a credit card, the first phone call

Michael Wojeski - Direct

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1 out, it will instruct the called party on how to set up the  
2 account and mainly use credit card, and they will set up an  
3 account with their deposit of, I believe it's now 25 or \$50  
4 and then as it gets down, the system will prompt them to add  
5 more money if they would like.

6 Q And that adding more money, is that done over the  
7 phone?

8 A Correct.

9 Q Is that pin number assigned to the inmate on arrival to  
10 the facility?

11 A Yes.

12 Q When an inmate makes a phone call, is the recipient  
13 advised that they're receiving a phone call from a  
14 correctional facility?

15 A Yes.

16 Q Is there a standard recording at the beginning of every  
17 inmate call?

18 A Yes.

19 Q And can you just give us the nature of that, the  
20 standard reporting?

21 A Global Tel Inc., you have a collect call from, blank,  
22 name, an inmate at Cayuga County Jail, and then it goes into,  
23 to accept the charges, press 5, I believe it is, and then to  
24 deny, to add money.

25 Q Is there an admonishment that the call is being

Michael Wojeski - Direct

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1 recorded?

2 A In the beginning of every phone call.

3 Q And are the inmates advised that their calls are being  
4 recorded?

5 A Yes.

6 Q Now when an inmate call is made, that call's recorded?

7 A Yes.

8 Q And how does the system keep track of those recorded  
9 calls, how are they stored?

10 A They're stored on hard drives in a secure room for a  
11 duration of time.

12 Q And is that stored digitally?

13 A Yes.

14 Q At some point can you tell us if an inmate by the name  
15 of Joseph Jenkins entered your facility?

16 A Yes, he did.

17 Q Have you reviewed the inmate records for Joseph  
18 Jenkins?

19 A Yes, I did.

20 Q And have you provided the U.S. Attorney's office with  
21 jail -- inmate calls made from the pin number of Joseph  
22 Jenkins?

23 A Yes, I did.

24 Q Can you describe how you did that?

25 A I went into the computer system which I have keys to

1 the locked room, I ran the name and the identification number  
2 through the report, it shows me every phone call he made,  
3 whether people accepted it, whether they denied him, if he  
4 made a phone call and before it finished he hung up, it will  
5 still record and let me know that he's tried, and I run the  
6 report and I just download it onto a disk which I forward on  
7 to the requesting agency.

8 Q At this time I'm showing you for identification  
9 purposes only Exhibit 10C and I'm going to ask you if you  
10 recognize Exhibit 10C.

11 A Yes.

12 Q What is that?

13 A That is the disk with the records from Mr. Jenkins that  
14 I made.

15 Q And what did you do with that disk, did you provide it  
16 to someone?

17 A Yes.

18 Q Who did you provide that to?

19 A To Mr. Willard.

20 Q Did you make any alterations to the recordings or are  
21 the recordings that are contained on the disk exactly as you  
22 recorded them?

23 A They are exactly as I recorded them.

24 Q I'm now showing the witness what's been previously  
25 marked as Exhibit 10A and I'm going to ask you if you

1 recognize 10A.

2 A Yes.

3 Q What is Exhibit 10A?

4 A That is another copy of the phone records.

5 Q Did you have an opportunity to listen to and review  
6 Exhibit 10A?

7 A Yes.

8 Q As well as Exhibit 10C?

9 A Yes.

10 Q 10A, is that a single phone call from the multiple  
11 phone calls that you recorded in 10C?

12 A Yes.

13 Q And you reviewed yourself Exhibit 10A?

14 A Yes.

15 MS. THOMSON: At this time, your Honor, I would  
16 move into evidence Exhibit 10A.

17 THE COURT: Any objection?

18 MR. GOLDSMITH: Just brief voir dire, if I may,  
19 your Honor.

20 THE COURT: You may.

21 VOIR DIRE EXAMINATION BY MR. GOLDSMITH:

22 Q Sergeant Wojeski, you actually downloaded the material  
23 from the computer system onto the disks?

24 A Correct.

25 Q And you provided these disks directly to the U.S.

Michael Wojeski - Direct

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1 Attorney's office, is that correct?

2 A I sent the disks to Mr. Willard.

3 Q Okay. And the disks as they -- as you're holding them  
4 in your hand today, are they the exact disk that you  
5 produced?

6 A Yes.

7 MR. GOLDSMITH: No further questions, no objection.

8 THE COURT: Received.

9 CONTINUED DIRECT EXAMINATION BY MS. THOMSON:

10 Q Exhibit 10C, what time period did you save, in terms of  
11 dates if you could look at Exhibit 10C and tell us what dates  
12 you preserved.

13 A This was 10/6/2011 to 4/20/2012.

14 Q And then Exhibit 10A, again having had the opportunity  
15 to review it, is that a call that was made from your facility  
16 on March 6, 2012?

17 A Yes.

18 Q And that call was recorded?

19 A Yes.

20 Q The contents of that recording, are they on  
21 Exhibit 10A?

22 A Yes.

23 MS. THOMSON: Your Honor, at this time I would seek  
24 to publish Exhibit 10A.

25 THE COURT: Go ahead.

Michael Wojeski - Cross

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1 (A telephone call from Government Exhibit No.  
2 10A was played.)

3 Q Agent Wojeski, did you also make a CD of calls from the  
4 time period April 25th, 2012 to August 8, 2012?

5 A Yes.

6 Q Are those contained on Exhibit 10D?

7 A Yes.

8 Q Each of the instances where you provided a CD of calls,  
9 was the system in operating order at the time that you  
10 recorded it?

11 A Yes.

12 MS. THOMSON: I have no further questions.

13 THE COURT: Any cross?

14 MR. GOLDSMITH: Briefly.

15 CROSS-EXAMINATION BY MR. GOLDSMITH:

16 Q Corporal Wojeski, there was just a phone conversation  
17 was played in the courtroom, correct?

18 A Yes.

19 Q And that was a conversation that you had recorded at  
20 the request of the United States government, correct?

21 A Yes.

22 Q And that was a conversation that you had copied from a  
23 system and provided to them, right?

24 A Yes.

25 Q Is that the entirety of the conversation?



Michael Wojeski - Cross

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1 A I don't believe so.

2 Q Do you happen to recall if there was -- what the other  
3 subject matter of that conversation was?

4 A No, I do not recall.

5 MR. GOLDSMITH: No further questions.

6 MS. THOMSON: Nothing further.

7 THE COURT: Anything further? You may step down,  
8 sir, thank you. Travel safe.

9 (The witness was excused.)

10 THE COURT: Have another witness?

11 MS. CARROLL: We don't, your Honor. The only thing  
12 left for the government is to move into evidence what was  
13 admitted subject to connection.

14 THE COURT: Okay.

15 MS. CARROLL: That consists of Exhibit 13, 13A,  
16 and -- and the physical evidence, your Honor, so Exhibits 3A,  
17 4A, 5A, 6, 7, 8, and 9, all of the additional --

18 THE COURT: All that were offered and received  
19 subject to connection with regard to the chain of custody?

20 MS. CARROLL: Yes, your Honor.

21 MR. GOLDSMITH: May I approach?

22 THE COURT: You may. Come on up.

23 (At Side Bar.)

24 MR. GOLDSMITH: Your Honor, I object, can I  
25 continue to object on chain of custody? While there were a

1 number of witnesses regarding the chain of custody in this  
2 case that did provide certain vouchers related to it, we did  
3 not hear from Detective Sergeant Harrington who was the  
4 forensic expert and had possession of them, at least the  
5 physical evidence materials for some period of time during  
6 the Canadian investigation is not present. Accordingly,  
7 while I do certainly understand the chain of custody  
8 arguments are viewed in light of the preponderance standard  
9 and light most favorable to the government, I do think there  
10 was a significant gap that was not appropriately established  
11 and therefore would continue my objection and feel that the  
12 evidence should not be deemed properly admissible.

13 THE COURT: Who wants to be heard?

14 MS. CARROLL: I can be heard. Your Honor, we  
15 actually have a completely accurately documented chain of  
16 custody with no missing links. Harrington does not appear on  
17 the chain of custody forms because he was not the evidence  
18 custodian. It was signed into the forensic lab by Michel  
19 Boulay, who assigned the numbers to it and it stayed in the  
20 custody, during that part of the chain of custody it was only  
21 logged out of the forensic lab to be stored by Paul Thompson  
22 in another secure facility. Harrington actually could not  
23 provide evidence on the chain of custody because he doesn't  
24 appear in it.

25 THE COURT: So what was Harrington's role with

1       regard to the evidence?

2               MS. CARROLL: He performed the imaging.

3               THE COURT: Okay.

4               MR. GOLDSMITH: He was the Canadian forensic.

5               THE COURT: You're saying it never left the lab, it  
6 was never signed out, it was always in the custody of the  
7 lab.

8               MS. CARROLL: Exactly.

9               THE COURT: Okay. Yeah, I'm going to overrule the  
10 objection, I feel that there's sufficient factual basis to  
11 establish, legally establish chain of custody that's  
12 acceptable to this court to receive all the items that have  
13 been received subject to connection into evidence so they  
14 will be received into evidence. Now of course the chain of  
15 custody arguments that you'd like to make or choose to make  
16 to this jury are still something that you can do, that's a  
17 fact question for this jury as well. You can make those  
18 arguments but I find that it's legally sufficient so it will  
19 be received.

20              MR. GOLDSMITH: Thank you.

21              THE COURT: Okay. Anything else? You're going to  
22 rest?

23              MS. CARROLL: Yes.

24              THE COURT: I'll have you rest in front of the  
25 jury, I'll excuse the jury, I'll let you talk to your client

1 and decide what he wants to do. Depending on what he does or  
2 does not want to do, we'll make a record and then I'll bring  
3 the jury back and allow you to do what you want to do.

4 MR. GOLDSMITH: Right, thank you.

5 THE COURT: As far as either resting or putting him  
6 on, whatever you're going to do, okay.

7 (Open Court.)

8 THE COURT: Okay. With those evidentiary issues  
9 out of the way, and I'm going to ask that the attorneys  
10 confirm with my courtroom deputy all the evidence that's been  
11 received, subject to that, what does the government wish to  
12 do?

13 MS. THOMSON: At this time, your Honor, the  
14 government rests.

15 THE COURT: Okay, the government rests. All right.  
16 Ladies and gentlemen, the government's concluded their case.  
17 I want them to verify some evidence issues, that everything  
18 has been received so I'm going to give you a short break and  
19 I'm going to get you right back out here and we'll hear from  
20 defense counsel as to what they choose to do or not to do,  
21 completely up to them as you've already heard, and we'll act  
22 accordingly from there as to what we're going to do for the  
23 rest of the day, okay. So take a break, and please do not  
24 discuss the case.

25 (Jury Excused, 2:20 p.m.)

1 THE COURT: Okay. If counsel just wants to verify  
2 with my courtroom deputy that all the exhibits that you  
3 offered and believe are received into evidence are indeed  
4 listed as received into the record, we'll accomplish that  
5 task, and then Mr. Goldsmith, I'll hear from you and your  
6 client as to what you'd like to do.

7 MR. GOLDSMITH: Thank you.

8 THE COURT: Okay.

9 (Court in recess.)

10 (Open Court, Jury Out.)

11 THE COURT: Mr. Goldsmith?

12 MR. GOLDSMITH: I have, excuse me, I've conferred  
13 with Mr. Jenkins several times over the last couple of days,  
14 and certainly during the course of today's testimony,  
15 proceedings and at this time he has confirmed his desire to  
16 testify.

17 THE COURT: Okay.

18 MR. GOLDSMITH: Before we get into that, would the  
19 court prefer that I make legal applications pursuant to  
20 Rule 29?

21 THE COURT: You can do that now.

22 MR. GOLDSMITH: Okay. At this point, your Honor, I  
23 make two arguments. First, that the government has failed to  
24 meet its burden, even in light most favorable to the  
25 government as the standard is for Rule 29 applications. The

1 evidence in this case, while it provides sufficient facts for  
2 the jury to evaluate the presence of child pornography on the  
3 one laptop computer and on the three -- I'm sorry, two of the  
4 three flash drives, it did not in any way sufficiently  
5 establish the mens rea categories and the elements of these  
6 cases. In other words, the evidence did not establish that  
7 Mr. Jenkins knowingly and intentionally possessed those  
8 materials. In fact, the testimony of Special Agent Braisted  
9 earlier today clearly established that there is no particular  
10 device nor evidence nor conclusion that he could have made  
11 based upon the evidence itself as to who the actual users  
12 were logging in. He also provided evidence of the security  
13 levels, or rather, lack of security levels on the Toshiba  
14 computer, the fact that there was a file, a text file  
15 indicating all of the user names and passwords for all of the  
16 e-mails. That evidence does not -- withdrawn -- is not  
17 sufficient to prove beyond a reasonable doubt to any  
18 reasonable juror who the user was, and whether further down  
19 that user actually was the defendant Joseph Jenkins. So  
20 under those circumstances I believe that the evidence is  
21 insufficient to prove all of the necessary elements beyond a  
22 reasonable doubt.

23 The second aspect of my motion for the case to be  
24 dismissed at this point is in light of the evidence or the  
25 testimony that Kip Wohlert provided yesterday. It is a

1 reapplication of prior arguments by Mr. Jenkins that the  
2 jurisdiction, the procedures are not proper in this case  
3 under the U.S.-Canadian extradition treaty. Article 17 of  
4 that treaty, and I'm happy to provide the court a copy if it  
5 hasn't reviewed it already, dictates that it is up to  
6 executive authority of the Canadian and in this case the  
7 United States government to discuss and authorize the  
8 transfer of a case. Detective Wohlert testified yesterday,  
9 I'm sorry, Sergeant Detective Wohlert testified yesterday  
10 that it was his discretion and his decision alone when he  
11 made the phone calls to United States authorities in his  
12 attempts to follow up or have the United States authorities  
13 follow up in its pursuit of Mr. Jenkins after the bench  
14 warrant had been issued in Canada. For those reasons,  
15 respectfully request that the court dismiss the indictment in  
16 this matter.

17 THE COURT: Thank you, Counsel.

18 MS. CARROLL: Your Honor, first, as defense counsel  
19 acknowledged, Rule 29 motions are to be construed in light  
20 most favorable to the government and it is the government's  
21 position they have met and sustained the burden of proof well  
22 exceeding the requirements of a Rule 29 threshold. The issue  
23 that defense counsel raised was the government's failure to  
24 establish sufficient proof to sustain the knowingly and  
25 intentionally element of both Counts 1 and 2.

1 First of all, on the issue of the defendant's  
2 ownership of the laptop computer and the USB drives, we heard  
3 testimony that the defendant explicitly acknowledged his  
4 ownership of the Toshiba laptop to Officer Johnston.  
5 Further, a photograph of the defendant was found on the  
6 Toshiba laptop, and the defendant at no point disclaimed  
7 ownership of the USB drives, the 8-gigabyte and the  
8 4-gigabyte that are identified in Counts 1 and 2.

9 Beyond that, we heard testimony from certified  
10 forensic examiner Braisted about an interwoven fabric of  
11 activity on the Toshiba laptop and the 8-gigabyte and  
12 4-gigabyte USB drives reflecting the identity of the user and  
13 owner and operator of those laptops. All of the internet  
14 activity, all of the file creation activity that Agent  
15 Braisted described were done by a user with the profile name  
16 Joe. The defendant's first name is Joseph. The only user  
17 profile on that computer was Joe.

18 Beyond that, Agent Braisted testified that the  
19 user, who was accessing internet sites associated with child  
20 pornography, the user who created New Folder 2, the user who  
21 transferred child pornography into New Folder 2, the user who  
22 put an 8-gigabyte and a 4-gigabyte USB drive into that  
23 Toshiba laptop, the user who transferred images of child  
24 pornography to the 8-gigabyte and 4-gigabyte USB drive was  
25 also accessing internet accounts that were password



1     protected, and Agent Braisted testified the cleaning software  
2     on that computer would have been -- there was no saving of  
3     the credentials that would have allowed access to the e-mail.

4             Beyond that, the user who was accessing child  
5     pornography, saving child pornography, did things like pay  
6     Mr. Jenkins' Master Card bill, access e-mails from the  
7     Jenkins Electronics Company. We heard testimony that Joseph  
8     Jenkins told multiple officers he operated an electronics  
9     company. He responded to e-mails, he signed e-mails with the  
10    name Joe, he accessed things like travel websites and paid an  
11    insurance bill, all activity interspliced with the accessing  
12    and saving of child pornography. Agent Braisted's testimony  
13    on that point was more than sufficient to establish that the  
14    defendant knowingly and intentionally possessed that child  
15    pornography found on the USB drives and the Toshiba.

16            Finally, beyond that, there's the testimony  
17    concerning the defendant's demeanor when he was confronted  
18    with the fact that child pornography was found on the Toshiba  
19    laptop and USB drives. The defendant at no point expressed  
20    shock or outrage, he never disclaimed ownership, his  
21    responses were, not to my knowledge is there child  
22    pornography on the digital media, and I don't think I've ever  
23    downloaded child pornography and saved it onto my laptop.  
24    Those responses in and of themselves are enough for the  
25    government to meet the threshold requirements under Rule 29

1 motion as to the scienter elements of Counts 1 and 2.

2 THE COURT: Okay, Counsel, do you want to be heard  
3 on the second part of counsel's argument? He's requesting  
4 once again the dismissal of the indictment based on  
5 extradition treaty between United States and Canada.

6 MS. CARROLL: Your Honor, to the extent the court  
7 has ruled on this issue numerous times, the government simply  
8 asks the court to refer to its previous decisions and orders.  
9 This was a motion that was renewed at the commencement of  
10 trial, the court again denied the motion referring to its  
11 previous decision.

12 THE COURT: But he's specifically referencing the  
13 testimony of a witness at the trial now and is making a  
14 reapplication based on that testimony.

15 MS. CARROLL: Your Honor, the basis of counsel's  
16 argument, my understanding, is the extradition treaty in  
17 Canada. The extradition treaty in Canada holds no legal  
18 weight and cannot provide a basis for the dismissal of the  
19 indictment under United States laws. The defendant's failure  
20 to appear in Canadian court would not necessarily revoke the  
21 extradition treaty but it is evidence of his consciousness of  
22 guilt. The extradition treaty holds no force and sway over  
23 the indictment under which the defendant stands charged here.

24 THE COURT: Okay. Thank you, Counsel. The court's  
25 going to deny defendant's motion and find that there is

1 sufficient evidence, particularly given the standard that  
2 needs to be looked -- evidence needs to be looked at in the  
3 view most favorable to the government, therefore the Rule 29  
4 is denied.

5 With regard to the renewed motion regarding the  
6 extradition treaty between United States and Canada, the  
7 court will rule the way it has previously, irregardless of  
8 the testimony we heard during the trial, the court finds that  
9 that has no bearing on the prior rulings that I've made with  
10 regard to this case. The fact that the defendant is residing  
11 in the United States, he was arrested in the United States,  
12 this case was brought and indicted here in the United States,  
13 the extradition treaty between the United States and Canada  
14 has no bearing with regard to this indictment and the pending  
15 charges that are now before this jury. Okay. You've  
16 indicated you'd like to put a case on?

17 MR. GOLDSMITH: Yes, your Honor. Mr. Jenkins will  
18 be testifying as I noted earlier. To those ends, there's one  
19 issue that I think should be addressed by the court. Earlier  
20 today during the testimony of Special Agent Braisted, after a  
21 lengthy side bar, examination of the Canadian forensics  
22 report based upon defense counsel's beginning of a line of  
23 questioning on it, the court made a ruling that we would not  
24 be able to pursue questions in cross-examination of Special  
25 Agent Braisted based upon Canadian forensic report.

1 THE COURT: That's not accurate, Counsel. That was  
2 not the court's ruling.

3 MR. GOLDSMITH: All right.

4 THE COURT: The court in no way precluded you from  
5 examining Special Agent Braisted with the Canadian report.  
6 What I precluded you from doing was asking misleading  
7 questions and misstating what was in that report. I never  
8 precluded you and would not preclude you from asking  
9 questions about the Canadian report. All I did was explain  
10 that you had to have a good faith basis for asking the  
11 questions, the questions have to be factually correct when  
12 you're referring to a report and they weren't. And that was  
13 the nature of my ruling. You indicated that you would  
14 withdraw that line of questions, I told you it wouldn't be  
15 necessary at this point, I said we'll allow the government to  
16 clean it up on redirect. And that was my ruling. In no way  
17 did I ever preclude you from asking questions from that  
18 report to Special Agent Braisted.

19 MR. GOLDSMITH: Your Honor, correct, I apologize  
20 for the imprecise nature of my formulating statement, but it  
21 really is not the point of my commentary now. The reason I  
22 raise the issue is because the court wanted a good faith  
23 basis, and at the time was questioning the results of those  
24 tests given the nature of the test performed related to  
25 Mr. -- Special Agent Braisted. In light of the fact that the

1 government has introduced a telephone call in which  
2 Mr. Jenkins is recorded discussing a number, or when I say  
3 number, a number value of files related to those two findings  
4 made by the government, I believe that Mr. Jenkins may take  
5 the opportunity to try and explain what was his mindset in  
6 discussing those numbers or discussing the conversation that  
7 was brought into the record by the government. And I want to  
8 ensure that if Mr. Jenkins is to mention and discuss his  
9 mindset in discussing or what was engaged in that  
10 conversation, that the court would not find it preclusive in  
11 nature.

12 THE COURT: It's not really clear to me what you're  
13 asking.

14 MR. GOLDSMITH: In other words, I want to make sure  
15 that if Mr. Jenkins discusses his mindset as to what he is  
16 discussing in that phone call, in the recorded phone call,  
17 that the court will permit him to discuss it.

18 THE COURT: You want to be heard?

19 MS. THOMSON: Your Honor, if I understand the  
20 argument, it's that when he's indicating amounts, he's using  
21 the Canadian report as a basis. If the defendant does  
22 testify that way, then it would be the government's  
23 opportunity during cross-examination to bring out the fact  
24 that there was child pornography and in some instances more  
25 child pornography was categorized in Canada than it was in

1 the United States. At all times the government, besides  
2 explaining the nature of the case, the way that the case came  
3 to us, we've been specific not to elicit how many images from  
4 Canada because he's not charged under Canadian law. The  
5 categorization of child pornography is different in the  
6 United States as it is in Canada so it could lead to juror  
7 confusion but if this is the road the defendant goes down and  
8 the court allows that road, then the United States will ask  
9 him questions with regard to that.

10 THE COURT: There's no reason for me to preclude  
11 anything, and let me make the record clear. With regard to  
12 Special Agent Braisted, the court, over the government's  
13 objection, allowed you to ask him questions about the  
14 Canadian report because he had testified that he had reviewed  
15 that report at some point in time during his examination and  
16 the work that he'd done on this case, in viewing the  
17 different electronic media that he was assigned to do. And  
18 certainly, as I ruled, that area was appropriate  
19 cross-examination. The only thing I indicated to counsel  
20 that wasn't appropriate was to misstate or mischaracterize  
21 the report in questions during cross-examination to Special  
22 Agent Braisted. You have an obligation to have a good faith  
23 basis for your question and not to insinuate, as the court  
24 believed you were inappropriately, information that was not  
25 contained in the report.

1           So if Mr. Jenkins wants to talk about his state of  
2 mind with regard to his conversation or the things that he  
3 said during a phone conversation, that's between you and your  
4 client. He's free to testify as he will, and of course he's  
5 subject to cross-examination based on whatever direct  
6 testimony he gives.

7           MR. GOLDSMITH: Very well, your Honor. Thank you.

8           THE COURT: Okay.

9           MS. THOMSON: Your Honor, would you entertain the  
10 parties have an opportunity to go to the bathroom, just  
11 quick?

12           THE COURT: Go ahead, we'll take a brief break, get  
13 this jury out here. I want to keep moving because of the  
14 weather situation.

15           (Pause in Proceedings.)

16           THE COURT: Okay, we have counsel back, we're going  
17 to proceed. Mr. Goldsmith, you've indicated Mr. Jenkins  
18 wishes to testify, is that right?

19           MR. GOLDSMITH: Yes, that is.

20           THE COURT: Mr. Jenkins, is that right, you want to  
21 exercise your right to testify?

22           THE DEFENDANT: Yes.

23           THE COURT: Okay, we're going to have you come up  
24 and get in the witness seat now before the jury comes in the  
25 room. Okay, Counsel, you ready to proceed?

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1 MR. GOLDSMITH: Ready.

2 THE COURT: Okay?

3 MS. THOMSON: Yes, thanks.

4 THE COURT: Please bring the jury in.

5 (Jury Present, 2:43 p.m.)

6 THE COURT: Okay. The record should reflect we  
7 have the ladies and gentlemen of the jury after a recess, and  
8 the government has rested its case.

9 Mr. Goldsmith, you've indicated that defendant  
10 intends to put a case on, correct?

11 MR. GOLDSMITH: That's correct, your Honor.

12 THE COURT: And you're calling your first witness?

13 MR. GOLDSMITH: Yes, at this time defense would  
14 call Joseph Jenkins to the stand.

15 THE CLERK: Good afternoon. Can you state your  
16 full name, spell it for the record, please.

17 THE DEFENDANT: Joseph Jenkins, J-o-s-e-p-h,  
18 J-e-n-k-i-n-s.

19  
20 J O S E P H J E N K I N S , called as a  
21 witness and being duly sworn, testifies as follows:

22 MR. GOLDSMITH: May I inquire?

23 THE COURT: When you're ready.

24 MR. GOLDSMITH: Thank you.

25 DIRECT EXAMINATION BY MR. GOLDSMITH:



1 Q Mr. Jenkins, where do you live?

2 A Geneva, New York.

3 Q And prior to your arrest, what did you do for a living?

4 A I'm a self-employed electrician.

5 Q Why don't you describe your practice a little bit.

6 A Um, I started the business about 1991, um, I received  
7 some training, maybe, I don't know, 600 hours locally, and  
8 um, I picked up some work. I used to -- I started out by  
9 myself, I subcontracted a lot of work up, Eastman Kodak, it  
10 was busy at the time, you know, people still used film, I  
11 worked up there for probably four, five years, on and off,  
12 and then that started to kind of slow down. So, um, we began  
13 picking up jobs around the Geneva area, you know, anywhere  
14 between Rochester and Syracuse and even down as far as  
15 Elmira, just the general area. I had, took on a couple  
16 partners for a while, and we did larger jobs like --

17 Q Let me stop you, what is a larger job?

18 A I'd call it -- well, like medium commercial work, um,  
19 banks and restaurants, we did a ton of restaurants, few  
20 banks, we've done Boy Scout camps -- actually I did that on  
21 my own, but I had partners and we just took on a lot of, you  
22 know, like small, medium commercial work, that the three of  
23 us could do. We --

24 Q Let me stop you for a moment. Did you have the  
25 occasion to use computers for your work?

1 A Yes. Of course all invoicing and things like that are  
2 done on the computer, we -- I picked up a generator  
3 franchise, probably about 10 years ago, selling service,  
4 generators, residential, commercial. We order -- use the  
5 computers for diagnosing the boards in the generators.

6 Q How do you use the computer to diagnose a problem with  
7 the generator?

8 A Um, there were CDs that we had, there were some CDs,  
9 there were some programs, that's what one computer was always  
10 in the vehicle for. And it ran an older operating system, I  
11 bought -- there were some computers I bought off eBay at one  
12 point in time.

13 Q Let me stop you. When you said there was one computer  
14 in your vehicle, describe a little bit more detail what you  
15 mean by that.

16 A There was a -- there was a computer in the briefcase,  
17 wireless, couple of different wireless cards with it, and we  
18 could -- well, you know, different applications, we could --  
19 there's programs to run for generators, you can plug them  
20 into the computer or, um -- well, there's just, there's just  
21 CDs, you pick a generator, pick a CD, plug it in, you can  
22 program the boards and diagnose them, find out what's wrong  
23 with them, things like that. You could order generators, get  
24 online, order parts for them, find out what's wrong with  
25 them, could order parts for them. There was one, I used to

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1 buy old computers because basically what we do is when we  
2 hire people, they're required to have basic hand tools and  
3 transportation. If there's anything that you run above that  
4 like computers, power tools, ladders, have to provide that  
5 for them.

6 Q You said -- you just mentioned that you hired people.  
7 Approximately, or to the best of your ability, how many  
8 people were working with or for you for your company?

9 A I probably had up to 10. I like to use subcontractors.  
10 So I can get them on and off, employed some part-time people  
11 because work is kind of up and down, it could be very busy  
12 one week and, you know, there could be nothing going on  
13 another week or we could have six solid months of work and  
14 then a month of nothing, and so I try to, you know, employ  
15 different people and I have -- there's maybe 10 different  
16 contractors in our area who are all very good friends and we  
17 trade labor back and forth, might be somebody we could use  
18 for a particular job, and we'll trade, you know, one person  
19 work out better for certain types of jobs than others. We do  
20 mainly 70 percent commercial and about 30 percent  
21 residential. So like to use certain people for certain  
22 things, but for service work you would use the more  
23 intelligent people because you have to troubleshoot, whether  
24 it's residential, commercial or generators, things like that,  
25 and we used my truck for service work because it had most of

1 the tools in it.

2 Q In 2009, approximately how many people worked with your  
3 company?

4 A That was about the time me and my two partners kind of  
5 started to split up, I probably had about three of my own at  
6 that time.

7 Q Okay. So there's three people in addition to you?

8 A Yes.

9 Q Could you describe the setting of -- withdrawn. Other  
10 than the computer that was in the truck, were there any other  
11 computers that you used for that work?

12 A I have an office set up in my basement, there's  
13 probably four desks down there, um, it's accessible through  
14 the garage. Um, when we split up I moved pretty much  
15 everything back to my house. We had kind of a co-op, just a  
16 building that we used to store things, me and my partners and  
17 then we split up, moved most the stuff back to my house  
18 because 2008, 2009 was around the time of recession and  
19 things slowed down, and we were mainly doing service work for  
20 a while. And I take a lot of vacations and things so we  
21 leave -- I try to leave my truck, my truck home. If it were  
22 an airport, I'll take a second -- usually a second vehicle at  
23 my house, I'll drive that to the airport, leave my truck  
24 there. And anybody that's covering for me doing service  
25 work, there's an access code to get in the garage, opens the

1 door, and then have access to the basement, I would lock the  
2 house separate.

3 Q Let me stop you. You just testified there was an  
4 access code to enter the basement where the office was,  
5 correct?

6 A It opens the garage door, then you can walk through the  
7 garage, go down into the basement.

8 Q Did any of the individuals that you worked with know  
9 the access code?

10 A Yes. There were -- well, quite a few people, we have  
11 friends and family that check on the house, there were  
12 probably two or three guys that I used that would, if I  
13 wasn't there or they were doing something else, have to go  
14 there and pick up materials or some sort of special tool,  
15 they could go in there.

16 Q Could you describe how your business would function or  
17 operate if you were not at your home?

18 A I would have -- mainly there were two very good guys  
19 that were smart that worked for me that I could have do  
20 service work. We -- well, we're in Syracuse now, there's  
21 Waterloo Premium Outlets, there's a bunch of stores down  
22 there, I don't know if anybody's familiar with them, it's a  
23 big strip mall and there's service companies that, um, do  
24 maintenance at the stores. There's all kinds of different  
25 service companies so if there's a problem in the store,

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1 lights, anything else, cash register stops working, they call  
2 these service companies and then service company would call  
3 somebody like me to actually go to the store and do work. So  
4 they would send us. This is going on like, you know,  
5 probably got six or eight calls a week, to go to those  
6 stores. They'll call us, maybe two or three lights are out,  
7 two or three lights are out, then they'll send us a work  
8 order, either fax or e-mail, and you print that out, and the  
9 prices is already negotiated with these companies, you just  
10 get a form and you print it out or you pick it up at the fax  
11 machine and then you go to the store, they have to sign it,  
12 and that's pretty much it, then we send them in and get paid  
13 once the work's completed.

14 Q So again, could you describe how your business would  
15 operate if you were away on vacation?

16 A Oh, okay, we got off that. I would just -- I would  
17 have a couple guys I could call, I could call one of my  
18 former partners, we're still friends even though we split up.  
19 Like I said, I use part-time guys, some of them work nights,  
20 some of them work mornings, I mix and match to get the  
21 employees I need to get things done.

22 So if I didn't need my truck, I would leave  
23 that there for people to use, and they would have access to  
24 the garage and the basement. Somebody would have to check  
25 the e-mail or the fax machine, maybe at least once a day

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1     because these work orders come in from the malls or whatever,  
2     they would -- they pretty much want them done right away,  
3     they have to be done in two, three days.

4                 So at one point in time, sometimes I take long  
5     vacations, once during winter, once during summer, go to  
6     Florida for a month in the winter and I would go to Canada  
7     for -- it's hard sometimes to get away in the summer, but I  
8     try to get up there between two weeks and a month in the  
9     summer, and basically somebody else would have to take --  
10    most of the calls came to me on my cell phone, if I got a  
11    call, like call somebody else or text them or whatever to go  
12    do the work, they could get access to the vehicle, whatever  
13    else they needed there.

14    Q     So if you're on vacation, could you describe for the  
15    jury how your e-mails and faxes would get checked?

16    A     A lot of times I would bring -- normally I bring a  
17    laptop with me. I can pick up an e-mail that way. Or if I  
18    receive a phone call, normally have to coordinate the jobs,  
19    I'll have to call somebody else and say, well, you know, go  
20    to the house, get this, do that, or they could use their own  
21    vehicle, it doesn't take much, you know, to fix lights or  
22    whatever, you can take hand tools. If it was a generator  
23    service call, they'd have to go get -- I mean they're  
24    basically like car motors, with electronics on them, so there  
25    were a lot of parts that we stocked for those, and they would

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1 have to go to the house and get those. We get -- when I'm in  
2 Florida, the generator service business was -- it's pretty  
3 big especially in the wintertime, things get cold out, they  
4 don't want to start, you get error codes on them, they  
5 exercise once a week and, you know, you get little old ladies  
6 that -- they're depending on these things, we have a lot of  
7 power outages out in the rural areas and if they don't hear  
8 the thing start at the same time, they get right on the  
9 phone, call us, we have to go see what it is.

10 Q Could you describe a circumstance, if any, where other  
11 of the individuals who were working for you could have  
12 accessed your fax and e-mail on a time where you were not on  
13 vacation?

14 A Pretty much any time.

15 Q What do you mean by any time? Please explain.

16 A I mean there's a code in the garage and I'm not there.

17 Q And how about --

18 A There's friends and family, that code's been the same  
19 for 10 years, we haven't changed it.

20 Q Could you describe the access to your computer?

21 A The -- the Compaq computer was always, there were a few  
22 computers I had similar to that, smaller ones, Toshiba  
23 computer I bought for mainly doing estimates. We get, with  
24 computers now estimates, bids, I should say bids, I do a lot  
25 of bids, when you get calls for these commercial jobs, used



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1 to be they just used blueprints, you know, old-fashioned  
2 blueprints, big things, but now they save the money and they  
3 put the plans on CDs, .pdf files, so basically you stick that  
4 in the computer and you've got to go through and select what  
5 you want to print and then just print out whatever sections  
6 you want, do the estimates or you can just look at them on  
7 the screen, and basically that -- there were a few desktop  
8 computers. Toshiba laptop computer was mainly in the  
9 basement, at my desk, it's just smaller, you know, it's  
10 easier to handle and if I wanted to -- you know, if it's nice  
11 out I could take it out on the back porch, summertime, you  
12 know, work on it there, work on stuff. I don't work every  
13 single day, I don't go out and do physical work, but I like  
14 to stay busy. I actually like to do the physical work, I  
15 don't like the paperwork, and sometimes I delegate people to  
16 do the paperwork. We have -- I get in the truck, there's  
17 always a camera, if we do estimates, mainly residential  
18 estimates, I can send other people to do -- they go and like  
19 if it's an electrical service on a house, pretty much  
20 standard price for that, they can go with a camera, you know,  
21 talk to the homeowner, take pictures and then we would know  
22 what materials we needed, just by looking at the picture,  
23 picture's worth a thousand words when it comes to a job, you  
24 don't have to remember, you can open up the camera and take a  
25 picture of it.

1 Q Mr. Jenkins, let me focus you on, again, how the other  
2 individuals who worked with or for you could access your  
3 computers.

4 A They were not password protected, they were just in --  
5 they were in the office, if I wasn't there, like I said, it's  
6 pretty much open 24 hours a day if I wasn't there, if I was  
7 home I'd know somebody came in, but the files are -- there  
8 was -- nothing was password protected. They never had a  
9 problem until 2009, the e-mail was not password protected,  
10 there were three different e-mail accounts. I mean I'd have  
11 to type in -- the computers basically, we left the e-mail  
12 program open all day long, and it would check for e-mail  
13 every three or four minutes, it was set on automatic, and you  
14 know, of course if an e-mail came in, it would make a noise  
15 or some indication would be there and then we'd look at the  
16 e-mail. But there was wireless access in the house, wifi,  
17 then there's three computers that are hard wired. I probably  
18 had three computers down in the basement for different  
19 things. One for doing estimates, I kept some old computers  
20 that worked on like Windows XP because we have an old  
21 accounting program with 3 or 400 customers' names in it and I  
22 wouldn't get it to work past Windows XP so we just -- I just  
23 kept that.

24 Q So let me stop you. The computer itself, when you  
25 stated earlier was not password protected, do you mean that

1 anyone could access the computer itself?

2 A Yes, there was no restriction whatsoever.

3 Q And when you were discussing e-mail, could you describe  
4 whether there was any security measures on the e-mails that  
5 you had?

6 A No.

7 Q Why don't you describe or elaborate a little bit more  
8 than no.

9 A I mean basically you just turn on the computer, click  
10 on the e-mail icon, and you can -- you could send e-mail.  
11 All my -- all my computers were set up with the e-mail  
12 accounts. Other -- there was the Compaq one, one of the ones  
13 in the trucks, computer in the basement -- well, whenever I  
14 get them, like the computers that I bought a couple off eBay,  
15 just older XP ones that -- keep them in the truck that I  
16 really don't care about, employees can take them home if they  
17 want. Once in a while somebody take one home if they're  
18 working on a job, something like that, that's fine, they can  
19 do that. The batteries, the ones that I buy and keep in the  
20 trucks, the batteries aren't that good, we have power,  
21 power -- I have a power inverter in my truck, one in the  
22 front seat and one in the back that can power the computers.  
23 I mean they're pretty much accessible at any time.

24 Q Let me draw you to shortly before May 24th of 2009.  
25 Could you describe what was happening at that time in your

1 life.

2 A I don't remember specific jobs. I haven't had access  
3 to these computers since this happened. I don't really  
4 remember, I know we lost some data. All I remember was I was  
5 supposed to take the trip to Canada, I was supposed to leave  
6 on a Friday, and we picked up a job, three swimming pools in  
7 a suburb of Rochester, was probably about an hour from the  
8 house, I needed -- have a large trencher that just broke and  
9 I stayed home for three days working on it, put us behind on  
10 the pool jobs. People come in with -- people buy these  
11 swimming pools and the guys just come in, throw them in their  
12 yard and they're just sitting there until somebody comes,  
13 hooks them up, people are anxious to get them going so  
14 they're usually all over us to get them done, and so we just  
15 had a job that we did that, pushed it back Friday and  
16 Saturday, worked long days Friday and Saturday to get -- it  
17 was -- I think it was three pools, I remember, to get done,  
18 and then Saturday night, I basically just cleaned out the  
19 truck and threw some clothes in it and I left. I think I got  
20 up at 4:00 in the morning, I don't -- I think I left  
21 somewheres around 6, 5:30, 6, to go to Canada.

22 I just remember the swimming pool job before  
23 we left. It was, it was -- it was in a nice suburb, I  
24 remember the job, people just started peeling off hundred  
25 dollar bills and paying us cash, that's the only way --

1     that's why I remember that.

2     Q     A moment ago you testified that you just grabbed some  
3     clothes and threw it in the truck. Did you put anything else  
4     in the truck other than clothing?

5     A     I grabbed the Toshiba computer out of the basement. I  
6     had bought it the previous summer in Canada, at the time it  
7     was working slow, we thought it had a virus, had a couple  
8     other guys look at it, and we figured it was either -- I  
9     think figured it was kind of a combination virus and maybe it  
10    needed some more memory, something like that, so I was going  
11    to drop it by, put it in the original box, had the original  
12    paperwork, the original receipt. And Canada's kind of  
13    different, it's not like around here, on Sunday everything's  
14    closed in Canada, there's no stores open, there's nothing  
15    going on, people don't travel, everything's closed on Sunday  
16    in Canada. So I couldn't have dropped it off on Sunday, so I  
17    was just gonna try and maybe do something on the way back,  
18    just swing by the store, it was in Ottawa, had to go through  
19    Ottawa on my way to my parents' place.

20    Q     So at this point you're driving toward the border. Why  
21    don't you describe what happened next.

22    A     It was about -- I looked right at the clock, there's a  
23    duty free store before the border, and once in a while my  
24    parents want me to pick up a bottle of vodka or something  
25    like that so I called them, I looked right at the clock, it

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1 was 9 -- 8:50, ten minutes to 9 when I passed the duty -- I  
2 called them just before I got to duty free store, do you want  
3 anything, they said no so I blow by it, went straight to the  
4 border.

5 I noticed that there was little to no activity  
6 there. I'd been to Canada probably 40 something times, my  
7 parents have always had a place up there ever since I was a  
8 kid. I've always gone at least once a year. And I've had my  
9 car searched probably four, five times going up there, there  
10 wasn't anything in there that I was aware of. My mother  
11 wanted some deli meat and cheese, stuff like that, I had that  
12 in the cooler, she said they'd probably take it from me if  
13 they saw it, I wasn't really worried about that.

14 And I pulled up to the -- I think I was the  
15 only one there, it wasn't actually -- I think one of the  
16 officers up here testified, said there were only two lanes  
17 open or something, there was like nobody there when I pulled  
18 up there. And -- but then I figured I was going to get  
19 searched because probably, you know, lot of guys standing  
20 around, nothing to do. So sure enough when I got up there, I  
21 got up to the booth, the one officer that was up here, I  
22 don't recognize him but he said he was there, he'd already  
23 had an inspection ticket in his hand, I figured I was going  
24 to get pulled over, but I didn't really care. And he just  
25 asked me questions, writing stuff down on the ticket. I

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1 recognized that it was -- I'd seen them before, you know, he  
2 wasn't making notes, he was writing out the ticket, so he  
3 said, he just asked me a few basic questions and he said, all  
4 right, go in there, go inside the building so I did. Excuse  
5 me, thank you.

6 I pulled up, you kind of pull up diagonally, I  
7 think it was under a roof, and I didn't really do anything,  
8 just grabbed my passport, jumped out of the car. I don't  
9 remember if I left the keys in them or took them with me, but  
10 the one officer that was up here, Hache, he was -- he was  
11 standing up on a platform, and he was putting on a pair of  
12 gloves and just walking towards me, he just asked me for the  
13 keys to the vehicle and I either handed them to him or I said  
14 they're in there, I don't remember if I locked it or not.  
15 And he just went right to work on the vehicle, and I went  
16 inside the building.

17 And I encountered that -- the one lady who was  
18 up here, I think her name was Boyd, is that right? I think  
19 it was. At the counter, she asked me couple of basic  
20 questions, and she just said have a seat, you know, I know  
21 they were trying to make a big deal I was nervous, this and  
22 that, that wasn't true, you hear cops lie to make a case,  
23 that's pretty much all that was.

24 MS. THOMSON: Objection, your Honor.

25 THE COURT: Yeah, that will be sustained and it

1 will be stricken. Please conduct this examination with a  
2 question and an answer.

3 MR. GOLDSMITH: I will, thank you, your Honor.

4 Q So when you proceeded in to the counter, Mr. Jenkins, I  
5 believe you had testified that you were not nervous at the  
6 time?

7 A Absolutely not. I'd been to Canada --

8 Q What happened after you proceeded to the counter in the  
9 building?

10 A I, like I said, I was just asked a few questions and  
11 she said, you know, take a seat, and --

12 Q What happened after that?

13 A This was probably about five minutes to 9 at this point  
14 in time. I -- I sat down for 15 or 20 minutes, I didn't -- I  
15 don't know if I could see outside or not, but I -- I probably  
16 just had like four, five cups of coffee, just wanted to get  
17 up and walk around. So I went outside on the platform,  
18 outside the door, and they were, you know, all three of them  
19 are crawling through the truck, you know, going through  
20 everything. And I stood out there for maybe 10 minutes, and  
21 they were just finishing up.

22 Q When you say they, who is they?

23 A The three guys that were here. Pretty much happened  
24 like they described it. The one guy, Hache, he went through  
25 the driver's side, both doors in the cab on the driver's



1 side, and he had gone through. Well, when I was -- I cleaned  
2 out the truck the night before, I took all -- lot of garbage  
3 out of the back, the back seat just kind of collects garbage,  
4 tools and material and --

5 Q All right, well, let me stop you. You had said a  
6 moment ago that they were about finished with the inspection?

7 A Yeah, um --

8 Q What happened at that point?

9 A Well, I'd already noticed, what I was gonna say is when  
10 I was cleaning out the truck the night before, it was late at  
11 night, you know, because we worked late, the Compaq computer  
12 was in the back seat and I think I just took it out and I  
13 didn't really -- I don't remember if I looked in the bag or  
14 not, but I just took it out and put it on the floor in the  
15 front seat, it was up there with a cooler, little small  
16 cooler with some stuff my mother wanted. I remember Hache  
17 pulled it up, he was leaning over from the driver's side,  
18 opened it up on the passenger seat, opened it up, looks  
19 through it, put it back, he had gone through that and the  
20 side, the one -- one guy was going through, he was crawling  
21 around the back going through under the cab. The one, the  
22 one guy had said he was a lawyer, I don't remember his name,  
23 he had gone through like a trailer with two ATVs on it, the  
24 ATVs had boxes on them, he went through the boxes and he -- I  
25 think he started going through the back right passenger's

1 seat and that was when he found the Toshiba computer.

2 Q Is that Officer Johnston?

3 A I don't remember, I think he said he was a lawyer, I  
4 think that was him, he's a lawyer now or something.

5 Q So at that point what happened after he seemed to take  
6 over the Toshiba laptop?

7 A He came up to me, I was on the platform, he started  
8 questioning me about it, is it new, is it staying in Canada,  
9 I said, well, I purchased it in Canada last year, I was  
10 having some problems with it, I was gonna take it back to the  
11 store, see if they could, you know, make a recommendation in  
12 the store what was going on with it, and I'm not really sure  
13 why but he asked me like really dumb questions for like two,  
14 three minutes about the computer. He seemed to be obsessed  
15 with it, I don't know why.

16 Q What kinds of questions?

17 A Um, tell you the truth, I don't even remember. They  
18 went on for like two or three minutes and I'm thinking like I  
19 didn't really know why he was asking me all these questions.  
20 I really don't remember, I -- it was five years ago, so -- he  
21 just, he had some interest in it, when I bought it it was,  
22 five years ago laptops were expensive, so --

23 Q Do you recall being asked questions by any of those  
24 officers about child pornography?

25 A No, um, I mean not -- not before, or during the search,

1 no.

2 Q Okay. So what happened next?

3 A I don't know, he was fixated on that computer so I went  
4 back and I guess he went back to turn it on, he asked me a  
5 bunch of questions about it. I was -- I was getting little  
6 irritated because they been crawling through the car for  
7 probably half hour, 40 minutes, and I don't know if anybody's  
8 been through a border search or not, you know, just watch  
9 your stuff get tossed, three guys, and it's -- gets a little  
10 annoying after awhile. So, and there was a lot of stuff in  
11 there because it was the work truck, and there was stuff in  
12 and out of the back seats and, you know, things like that.  
13 So he went back and turned on -- he must have turned it on or  
14 something, I couldn't see -- the windows in the truck are  
15 kind of tinted, couldn't probably see what he was doing but  
16 he was -- the door was open and he was in there for maybe 10  
17 minutes.

18 Q So what happened next?

19 A I think he called -- he called another officer over,  
20 maybe it was Hache, one of the other ones, and the two of  
21 them looked at it for another five or ten minutes, I really  
22 don't know, I lost track. Then he just -- Hache, the guy, he  
23 had already gone through the computer in the front seat, he  
24 opened up the passenger's door and grabbed that whole laptop  
25 bag and just, they took both computers inside.

1 Q What happened after that?

2 A Not -- I can't remember. They -- he said he said  
3 something to me when they were taking the computers, I really  
4 don't remember. I think I may have questioned them like what  
5 the heck are you doing or something like that. They didn't  
6 say anything, they just walked by me.

7 Q How long had all this been going on?

8 A It was probably at least 9:30, 9:40, probably 9:30,  
9 9:40 when they took the computers inside, somewhere around  
10 there.

11 Q Okay. And what happened after they took the computers  
12 inside?

13 A Nothing for quite awhile. I just sat, sat, I either  
14 stood outside, sat on a bench inside, and just waited.  
15 Actually I think he did come out, yeah, Hache came out, and  
16 he started asking me -- yeah, he did ask me, he came out and  
17 he said, you know, um, he basically asked me those questions  
18 I think he testified to, have you ever -- I don't remember  
19 what they were, and I said no, not to my knowledge, no, I  
20 don't think so. There was no delay, no hesitation, I just  
21 said it, I didn't curl up in a ball and start crying, that  
22 was a bunch of garbage. That was, I mean I didn't -- I had  
23 no knowledge of anything like that at the time on the  
24 computer. Like I said, it was just, you know, making a  
25 story.

1 Q Did there come a time when you were arrested that day?

2 A Yes. Maybe 20 minutes or so after that. I went up to  
3 him, I was like, what are you guys doing, how much longer are  
4 you going to be, and that's when they directed them to arrest  
5 me.

6 Q What happened after you were arrested?

7 A Nothing. They wouldn't tell me anything. They really  
8 didn't say anything, they didn't tell me what they found or  
9 where they found it or anything like that. Um, I was trying  
10 to question them, what he found, where he found it, and I  
11 just didn't get any answers. After that pretty much,  
12 everything pretty much happened like they said it did, except  
13 for the part, I wasn't nervous, I had my hands on the wheel  
14 and I was looking forward, that was just ridiculous, all that  
15 stuff, you know, I didn't curl up in a ball when he asked me  
16 about the computer, that was just ridiculous. That didn't  
17 happen.

18 Q So what happened after you were arrested?

19 A I really don't remember the specifics, like I said,  
20 pretty much what they said happened, couldn't really ...

21 Q Did there come a time where you were released from  
22 custody?

23 A Yeah. It was -- I think it was 24th, I called my  
24 parents. Well, that, that was the thing, I was there all day  
25 without a phone call, I was anxious to call my parents,

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1 they're older and -- 70s, and I had called them ten minutes  
2 to 9, said you can probably expect me about 1 and they  
3 wouldn't let me use the phone. So around 4:00 I started  
4 getting little irritated with them, I was like, I got to use  
5 the phone, you know, my parents are -- it's a twisted  
6 mountain road getting up where they are, it's a terrible  
7 drive but it's a beautiful spot where they are. And we've  
8 actually, my aunt had a friend going up to visit her one  
9 time, we own a few cottages on the lake up there, and she  
10 actually went off the road and died, went down a ravine and  
11 so when people travel up there, my parents get -- they get  
12 kind of anxious and I know they're expecting me 1, 2:00 and I  
13 just wanted to call them and tell them, I'm okay, I'm not  
14 there but I'm okay, and you know, I just wanted to tell them  
15 what happened so I was just anxious to use the phone to tell  
16 them, you know, don't come looking for me or anything, so ...

17 Q Again, was there a time where you were released from  
18 custody?

19 A Yeah, sorry. Yes, they came down day or two later,  
20 they -- they borrowed some cash money from a friend up there,  
21 came down and got me out a day or two later.

22 Q So you posted bail?

23 A I posted \$10,000 cash bail.

24 Q All right. And what happened after you were bailed  
25 out?

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1       A       Right before I was bailed out, there was, there was  
2       another inmate in the holding room with me, gave me a  
3       lawyer's name, Edgley, and I don't remember if I called him  
4       or my parents called him, but we retained him, he got a  
5       consignment on the bail, some sort of bail consignment, big  
6       leverage to get paid. So we retained him and then -- this  
7       was all in Brockville, which is maybe 45 minutes from the  
8       border crossing, and then they escorted me back to the border  
9       and I met my parents there and we picked up my vehicle and I  
10      think I signed some paperwork, they gave me my passport back  
11      and we headed back to the American border.

12     Q       So let me fast forward to the fall of 2010.

13     A       Well, there was the -- there was an incident I want to  
14      mention. On my way through the border on the way back, I was  
15      immediately detained by U.S. Customs and Border Patrol. They  
16      interrogated me for an hour about what happened in Canada and  
17      they proceeded to search my vehicle. I don't know if they  
18      made me empty my pockets or not, but they held me up for an  
19      hour. I was supposed to -- my parents were somewhere in the  
20      area there, and I was supposed to meet them, I don't know if  
21      it was maybe Watertown on the way back, I was supposed to  
22      meet them someplace for dinner and I was just late, I never  
23      showed up.

24     Q       Okay. So again, let me fast forward to the fall of  
25      2010. Were there legal proceedings in Canada?

1 A Yes. We had -- we had received some disclosure, there  
2 were several court appearances, no disclosure was made so  
3 maybe March 3rd, 2010, received part of a Canadian forensic  
4 report.

5 Q Let me stop you. Let's -- you recall that there was --  
6 several witnesses testified about being in court proceedings  
7 with you in the fall of 2010, here at trial?

8 A Yes.

9 Q And what were the purposes of those proceedings?

10 A The purpose of the proceedings were we never received  
11 disclosure. I'd hired another attorney in Geneva on the way  
12 back and he was supposed to deal with the Canadian attorney,  
13 and we never received a disclosure. We had several meetings  
14 with the Geneva attorney, and we never found out what was on  
15 the computer or even why they arrested me really.

16 Q Let me stop you. Was there a trial scheduled in  
17 October of 2010?

18 A Yes.

19 Q Did you appear for the trial?

20 A I did but the -- I was trying to get to that. The  
21 Canadian lawyer brought up charter motion because we never  
22 received the disclosure, there was some 15- or 17-month  
23 delay. They scheduled the trial in February and I had  
24 planned on -- I had the week of the 30 -- was it the 13th,  
25 September, I had that scheduled for trial but they --



1 Canadians never made disclosure in time so the trial couldn't  
2 go through. My attorney applied for a stay on proceedings  
3 and I guess at the time anything over eight and a half months  
4 for delay for a trial was considered worthy of a stay, and  
5 ten months was ridiculous so he thought we had a good chance  
6 of a stay on September 13th, so he asked me to appear, he  
7 sent me a notice to appear and I appeared.

8 Q All right. And were you aware of proceedings that were  
9 going to take place in October of 2010?

10 A We had discussed it with the attorney, he didn't make  
11 it mandatory that I appear. We -- as far as I knew, I was  
12 actually looking for another attorney at the time.

13 Q So let me stop you. So you heard testimony at trial  
14 from other witnesses about your not appearing in October of  
15 2010?

16 A Yes.

17 Q Okay. So is that why you didn't appear?

18 A Well, my -- the attorney I hired, he didn't seem to  
19 know what to do with the case, and at the beginning he said,  
20 you know, if things go bad and they issue a warrant for your  
21 arrest, he said, that -- this is just a complicated case.  
22 The lawyer gave me some advice right from the very beginning,  
23 he said -- which I didn't like, he said, you could just not  
24 return to Canada if you want to just not deal with the  
25 charge.

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1 Q Let me stop you. After the October date which you were  
2 not there, did you attempt to return to Canada for the case?

3 A No, because I wanted to find another attorney and we  
4 couldn't find another attorney while we had this attorney,  
5 this attorney from Brockville. I just figured I'd wait, he  
6 was gonna be done October 18th so sometime after that I was  
7 going to try to hire an attorney from Ottawa, a better  
8 attorney.

9 Q After the October period of 2010, what happened next in  
10 this case?

11 A Really nothing. When we received -- well, really  
12 nothing. I hired two attorneys to deal with it, and we  
13 didn't have disclosure on the trial date, and really nothing  
14 happened after that.

15 Q When, if ever, was your next encounter with law  
16 enforcement?

17 A Well, on September 13th when I returned I had an  
18 encounter. I was detained at the U.S. border and searched  
19 for two hours, which that was just harassed over a cell  
20 phone. And when Special Agent Willard was up here, I'd asked  
21 Mr. Goldsmith to try to get at is, Mr. Willard was the one  
22 that harassed me for over two hours on a cell phone --

23 MS. THOMSON: Objection.

24 Q Let me back up.

25 THE COURT: Objection will be sustained. I'm going

1 to ask again, this is a narrative.

2 MR. GOLDSMITH: I will try, your Honor.

3 THE COURT: There should be a question and an  
4 answer.

5 A Well, there's some points that need to be made here for  
6 the record.

7 Q Mr. Jenkins, let me bring you back because we were just  
8 discussing the appearance in Canada. Did you willfully  
9 refuse to go to Canada to evade prosecution?

10 A Absolutely not, there just wasn't a case, the lawyer  
11 hadn't prepared a case. A defense I guess.

12 Q Did there come a time when you were arrested in the  
13 United States?

14 A Yes. I heard nothing, I heard nothing further from the  
15 Canadian attorney, he just said I had a bench warrant in  
16 Canada, and I shouldn't be bothered anymore. That was the  
17 last I heard from him. I got a notice to appear on  
18 September 17th and I never heard any more from him. I was  
19 actually working on the 18th, we scheduled work after that,  
20 and I mean I showed up for the trial but the Canadians  
21 screwed up the investigation, just wasn't ready for trial,  
22 so --

23 Q Mr. Jenkins, let me bring you forward. There was a  
24 photograph that was admitted in testimony of this case, a  
25 photograph of you with a girl?

1 A My niece.

2 Q Okay. So that's your niece?

3 A Yes.

4 Q There was also testimony about wiping software. Could  
5 you describe what knowledge you had, if any, regarding wiping  
6 software on the Toshiba?

7 A Wiping software. It was, it was CCleaner, it was a --  
8 I think it's, I think C's an abbreviation for crap, crap  
9 cleaner, just cleans the -- so your computer works faster,  
10 just cleans up anything that builds up.

11 Q Did you install that into the computer?

12 A Probably, when I first -- yeah, I mean it's handy, it's  
13 just --

14 Q Why?

15 A Just to -- it gets rid of that adware and things like  
16 that.

17 Q Is that the reason why you installed it?

18 A Yeah, I mean there was no -- you know, any other  
19 reason.

20 Q Mr. Jenkins, there was a phone call that was recently  
21 played in court. Remember hearing the phone call?

22 A Yes.

23 Q Do you happen to remember that phone call other than  
24 just listening to it?

25 A I did, they edited the phone call.

1 Q What was the phone call about?

2 A The attorney I had at the time came in with the  
3 Canadian forensic computer exam, I hadn't seen it since my  
4 Geneva attorney showed it to me on March, somewhere around  
5 March 2010. It had indicated basically that there's no child  
6 pornography on the computers, and it's, a small amount was  
7 found on the thumb drives and the thumb drives were half  
8 erased. The only thing they found -- they wouldn't let me  
9 bring the paperwork up here with me, but there was no child  
10 pornography found, any live files on the computer but there  
11 was under deleted or something you couldn't see,  
12 inaccessible, I think. Canadians provided full disclosure on  
13 the proceeding, there were five, they classified five items  
14 as child pornography on the -- just in some unallocated space  
15 deleted, something.

16 Q Is that why you were referring to different numbers?

17 A Yes, he -- he put the paperwork down in front of me and  
18 kind of spread it out, there were charts and different things  
19 on it, and he said, look, here's -- we can defend you on  
20 this, there's only, you know, maybe --

21 Q Not discussing the conversation between you and your  
22 attorney.

23 A Well, that's how -- that's how this came up.

24 Q I just, just, please, with respect to the phone call,  
25 was it your belief at the time that the numbers that you

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1 discussed on the phone -- withdrawn. Did you have a belief  
2 at the time about the conversations you were having with your  
3 mother?

4 A Yes, I was getting into that. The attorney just put  
5 down the paperwork in front of me and he said, look, there's  
6 only a hundred things here, we can build up a defense for  
7 this, this is just an accident.

8 Q Just to what you understood, without what other people  
9 are telling you or not telling you, is that what you  
10 understood?

11 A That's what he told -- I didn't really look at them, he  
12 just put them down in front of me and I just glanced at them  
13 quick, he said, look, there's maybe a hundred things here  
14 that, I mean, that's just a mistake on here, I can defend you  
15 on this. He was just -- I don't even know why he --

16 Q I want to bring you back to the -- to May 24th of 2009.  
17 Did you make any statements to Canadian law enforcement?

18 A About?

19 Q Well, there's been testimony about questions that  
20 they've asked you. Did you make any statements to Canadian  
21 law enforcement?

22 A Just "Not to my knowledge" or "I don't think so," there  
23 was no -- there was no visible child pornography on either  
24 computer at the time.

25 Q Your statement, though, what were your statements

1 again, just your statements?

2 A "Not to my knowledge" and "I don't think so."

3 MR. GOLDSMITH: I have nothing further.

4 MS. THOMSON: I didn't know if the court was going  
5 to break.

6 THE COURT: I'm sorry?

7 MS. THOMSON: I didn't know if the court was going  
8 to break, I saw you look at your watch.

9 THE COURT: No, we're going to stop at 4 today,  
10 they tell us they want us to close at 4 so we might as well  
11 start your cross-examination. We've got 20 minutes.

12 CROSS-EXAMINATION BY MS. THOMSON:

13 Q Mr. Jenkins, let's see if there's a couple things that  
14 we can agree on. Let's start with May 24, 2009. Did you  
15 enter primary lane number 5 crossing from the United States  
16 into Canada?

17 A Yes, I don't know what lane it was, but yes.

18 Q You came from Alex Bay in Jefferson County and you  
19 crossed into Canada?

20 A Yes.

21 Q And when you crossed into Canada, were you driving your  
22 truck?

23 A Yes.

24 Q Nobody else's truck?

25 A No, it was mine.

1 Q And inside that truck, did you have two laptop  
2 computers?

3 A Yes.

4 Q Handing you Government's Exhibit Number 7 and  
5 Government's Exhibit Number 3A, are these the two laptops  
6 that you had in your truck when you crossed into Canada from  
7 the United States?

8 A This is the first time I've seen these.

9 Q Take all the time you need.

10 A I believe they are, yes.

11 Q On that day you were alone, weren't you?

12 A I'm sorry?

13 Q You were driving the truck?

14 A Yes.

15 Q No one else in the car?

16 A No.

17 Q You also had in the truck three thumb drives, isn't  
18 that correct?

19 A No.

20 Q No?

21 A I did not see those.

22 Q These were not in the truck. Have you ever seen these  
23 before? Why don't you take a real good look at those.

24 A I don't think so. I don't think so.

25 Q So is it your testimony that when you crossed into



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1 Canada on May 24, 2009, those items were not in your truck?

2 A I didn't put them there, no.

3 Q That's not the question. Were they in your truck?

4 A No.

5 Q So if they were found in your truck, you have no  
6 knowledge of them being in your truck?

7 A They weren't found in front of me and I have no  
8 knowledge of them being there.

9 Q You've never seen those thumb drives before?

10 A Never.

11 Q The Toshiba laptop, how did you have it stored?

12 A I believe I testified to that, it was in the -- it was  
13 in the original box, the original paperwork.

14 Q And that's your Toshiba laptop?

15 A Yes.

16 Q The Compaq computer, you had that in a bag?

17 A It was in -- it was in a laptop bag, that one, that one  
18 always stayed in the truck.

19 Q So the Compaq laptop was in a bag in your truck?

20 A Yes.

21 Q And the three thumb drives that were found in the bag  
22 in your truck, you have no knowledge of?

23 A I have no knowledge of them. I opened up -- when I  
24 moved the -- I was cleaning out the truck, I moved the  
25 computer to the front seat, I believe I opened up the bag and

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1 I just made sure the computer and the charger were in there,  
2 I just looked in there and saw the computer and the charger,  
3 I didn't see anything else. There might have been some  
4 paperwork, I usually have a -- a service kit made up with  
5 invoices or maybe some necessary paperwork, there might have  
6 been some papers in there with it that somebody could use if  
7 they had to do service work, they could just grab that bag,  
8 had pens, papers, business cards, anything like that would  
9 have been in there.

10 Q Did you look in the bag at the time that you prepared  
11 to go for Canada -- to Canada?

12 A The Toshiba bag, I just unzipped it and just looked in  
13 there and I saw the computer and the charger.

14 Q And that --

15 A I didn't go through the bag, any compartments or  
16 anything.

17 Q The bag that we're talking about was the one containing  
18 the Compaq laptop, because the Toshiba was in a box, right?

19 A Yeah, I think I still have the bag, I don't think they  
20 took the bag. There was two bags in the truck actually,  
21 laptop bags.

22 Q But you did not have the Toshiba in the actual laptop  
23 bag?

24 A No it was a cardboard box.

25 Q It was in a cardboard box. And that cardboard box is a

1 cardboard box that when you, as you got it, when the computer  
2 was new?

3 A Yes, it didn't have like the Styrofoam packaging in it  
4 or anything like that, but it was probably -- probably had  
5 the plastic bag in it or something like that, it was just  
6 sitting in the box. I may have thrown some files in there  
7 with it or something like that.

8 Q You have indicated you traveled from the United States  
9 to Canada numerous times before, correct?

10 A Oh, yes, probably at least 40 times.

11 Q If I understand your testimony, your mom had informed  
12 you that there was some deli meat and that that might get  
13 taken in the car?

14 A Yeah, she always has some special requests, they're  
15 kind of -- they're kind of out in the woods up there, so if I  
16 come up there, she usually asks me for things from the store.

17 Q I believe you indicated you really weren't nervous  
18 about the deli meat, is that right?

19 A Absolutely not.

20 Q In fact what you were nervous about is the fact that  
21 you were bringing two laptops and thumb drives into Canada  
22 full of child pornography, isn't that what you were nervous  
23 about?

24 A No.

25 MR. GOLDSMITH: Objection.

1 THE COURT: It's overruled.

2 Q You heard testimony you appeared to be nervous, is that  
3 correct?

4 A I appeared to be, that's what they said.

5 Q Perspiring?

6 A No.

7 Q Giving short evasive answers?

8 A No. I don't get nervous, I don't -- I'm not really  
9 afraid of anything, tell you the truth.

10 Q So you agree with -- if I understand your testimony on  
11 direct, you agree with the majority of the Canadian  
12 testimony --

13 A I agree with their statements.

14 Q Sir, if you could let me finish my question. So you  
15 agree with the majority of the Canadians' testimony, you just  
16 disagree with each of the officers that indicated that you  
17 were nervous, evasive, that you had a tight grip on the  
18 steering wheel, that you appeared not to make eye contact,  
19 each officer that testified to that fact, that's what you  
20 disagree with?

21 A Yes, I do.

22 Q You are an electrician?

23 A Yes.

24 Q And I believe you indicated on direct testimony that as  
25 part of your job being an electrician, there are times when

1     you produce invoices?

2     A     Yes. They can be either handwritten -- um, lot of  
3     customers like to pay you right when you're done or they can  
4     just write down on a piece of paper and bill them later.

5     Q     If we could see Exhibit 3B, page 9, please. Do you see  
6     Exhibit 3B, page 9 wherein there's a Jenkins Electric header  
7     and a quote on materials?

8     A     Yes.

9     Q     Do you also provide quotes?

10    A     Um, that's the -- that's the type of quote I would send  
11    to a electrical distributor, if I'm bidding a job, or if I'm  
12    just pricing materials to see where it's the cheapest place,  
13    I would send out something like that, I would fill in -- oh,  
14    whatever I wanted and they would price it and send it back to  
15    me.

16    Q     That's your address, 4072 Dwyer Lane in Geneva?

17    A     Yes.

18    Q     And did you create that quote?

19    A     Probably, yes.

20    Q     Do you recognize the name for, is it Ciccino's, am I  
21    saying that correctly?

22    A     Yes, that was a restaurant job, that was a restaurant  
23    that we did the electrical, it was a new building, we did the  
24    electrical work.

25    Q     That was one of your customers?

1 A Yes.

2 Q And you provided a quote to your customer?

3 A No, that's just the material I would use for the job.  
4 It's basically a blank form, I can either print it out or I  
5 can type it in there and print it out and I would send that  
6 to an electrical supplier and get the prices so I can do a  
7 bid.

8 Q And that form was found on your computer, correct?

9 A Yes, that was mine.

10 Q If we could see page 22, please. And this also, you  
11 were asked about a photograph on direct, that's you?

12 A Yes, that was taken at our place in Canada.

13 Q And that picture you stored on your computer?

14 A I don't know if -- I don't know if somebody took the  
15 picture or -- I don't really know how it came about.  
16 Probably, I probably did.

17 Q You probably stored that picture on your computer?

18 A Yeah, I guess one of my parents could have done it, but  
19 I probably did it.

20 Q Do you have e-mail accounts?

21 A Yes, three.

22 Q Would that be jjenkins@rochester.rr.com?

23 A Yes, I -- we had an option to set up three accounts,  
24 one was for my parents, one was for me, and one was for the  
25 business.

Joseph Jenkins - Cross

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1 Q The one that you set up for your parents, is that  
2 gjenkins?

3 A Yes.

4 Q And did you set up one for Jenkins  
5 Electric@rochester.rr.com?

6 A Yes.

7 Q Now that particular e-mail, did you set the password as  
8 joseph70?

9 A I don't know passwords, they were saved in the  
10 computer.

11 Q Is 70 your birth year?

12 A Yes.

13 Q So the gjenkins account would be something that you  
14 would have set up for your father?

15 A Yes. Parents.

16 Q Are you familiar with the word Lolita?

17 A No.

18 Q You've never heard that word before?

19 A I couldn't give you the definition of it, no.

20 Q You ever seen that before?

21 A No.

22 Q Do you know what it means?

23 A No, I just said I couldn't give you the definition of  
24 it.

25 Q So the fact that there are sites called Great Lolita,

1 Lolita BBS, Lolly, Lolita BBS, multiple times marked as a  
2 favorite on your computer, you have no knowledge of that?  
3 That's a yes-or-no question, do you know whether or not you  
4 had marked as a favorite on your computer items including  
5 Great Lolita, Lolita BBS?

6 A No, they looked out of place there.

7 Q They looked out of place, did you see them yourself?

8 A I only saw what you put on the screen, I haven't -- I  
9 haven't turned these computers on in five years. They  
10 looked -- that was in with -- that was in with just work and  
11 eBay stuff, it looked out of place to me.

12 Q Well, this is your computer, right?

13 A Right.

14 Q And so you would use your computer for work?

15 A Yes.

16 Q Right, and then how about if you took a trip with your  
17 ATVs, would you save pictures or save any remnants of your  
18 ATV trips?

19 A Absolutely, they were on there.

20 Q So these items being mixed in with work items and other  
21 personal items, not really out of place, are they, they're  
22 right where they belong on your computer?

23 A No, they didn't look like they belong there.

24 Q Did you have an insurance policy through Nationwide?

25 A Probably.



1 Q And did you pay for your insurance policy online?

2 A Probably.

3 Q If we could see Exhibit 3B, page 20, please. Do you  
4 see Exhibit 3B, page 20 where it indicates, "Dear Joseph:  
5 Thank you for making your payment using MyNationwide," is  
6 that your insurance company?

7 A It must have been at the time, switched quite a bit, I  
8 price them out every year and switch them. I'm sure it was,  
9 yes, I probably did.

10 Q Do you also use IKEA home planner, is that something  
11 you use?

12 A No, a customer actually sent the program to me, they  
13 wanted an estimate for a kitchen, they bought some cabinets  
14 or something. Had something to do with a customer, I don't  
15 normally use it. It was just for one job I think somebody  
16 sent it to me.

17 Q And if they sent it to you, then that would be on your  
18 computer?

19 A Yes.

20 Q Again, your Toshiba laptop?

21 A Yes.

22 Q Now you testified a little bit about some proceedings  
23 that you had in Canada. Do you remember that testimony, that  
24 you had a proceeding specifically in September,  
25 September 13th of 2010, do you recall that?

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1 A Yes.

2 Q And on September 13, 2010, you brought a motion before  
3 the court on behalf of -- your attorney brought a motion on  
4 your behalf complaining about unreasonable delay and the case  
5 going forward, is that true?

6 A Yes.

7 Q They call that a charter motion?

8 A Charter motion.

9 Q Because you were asserting there was an unreasonable  
10 period of delay for your trial to happen?

11 A Right.

12 Q And on that same date, did you ask for the trial not to  
13 go forward?

14 A No, I -- the attorney told me to show up and he was  
15 going to do a motion and he just said show up and you might  
16 be there for the day and go home. That's what I did, I  
17 really wasn't too aware of what was going on at the time. He  
18 just told me to show up and say a few things and go home.

19 Q Were you also aware that on that date there were  
20 witnesses that were there prepared to attend the trial of the  
21 matter?

22 A I did, I did, they were the same ones that were here.

23 Q And that trial didn't go forward?

24 A No.

25 Q Now on that date, September 13, 2009 [sic], do you

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1 recall being in the courtroom and seeing Detective Constable  
2 Kip Wohlert, do you recall him?

3 A No. I didn't until, according to the court transcripts  
4 and I saw his name on there, but I couldn't have identified  
5 him.

6 Q Let me ask you this. Do you recall that you were  
7 observed with a cell phone on September 13, 2010 and you were  
8 made aware that you were seen with that cell phone on that  
9 date?

10 A Yes.

11 Q And having that cell phone violated your conditions of  
12 release in Canada, isn't that correct?

13 A No, it didn't.

14 Q Okay, so you were permitted to have a cell phone that  
15 had internet access?

16 A It didn't have internet, it was a flip phone.

17 Q Do you recall being told that you were observed with  
18 that cell phone and that they wanted to ask you some  
19 questions about that cell phone, perhaps to check to see if  
20 it had internet access?

21 A No, my attorney -- my attorney called me into a room  
22 and he said, they're making a big deal about your having a  
23 cell phone, just get rid of it, is what he told me.

24 Q Your attorney told you to get rid of the phone?

25 A Yes.

1 Q Is this the same attorney who told you not to show up  
2 for a trial in October --

3 A Yes.

4 Q -- of 2013 [sic], advised you to break the law?

5 A Yes.

6 Q Your attorney advised you that on that occasion, not to  
7 go to your own trial?

8 A Yes, that's why I was looking for a new attorney.

9 Q And your attorney told you to destroy that telephone?

10 A I didn't destroy it.

11 Q What'd you do with it?

12 A I'm not sure, showed up at home, but -- few days later.

13 Q When you were testifying on direct examination, you  
14 complained about the fact that you were stopped at the  
15 border, I believe you called it for two hours and subjected  
16 to a search; do you recall that testimony?

17 A I was. I was, I found it offensive.

18 Q Do you recall that what they were searching for was  
19 that cellular telephone?

20 A I remember they didn't find it.

21 Q That's because you destroyed it?

22 A No, I didn't, I still have it today, I didn't destroy  
23 it.

24 Q Okay. Well, let's be simple here. When you were  
25 stopped, you did not have the cell phone that you had earlier

1     that day?

2     A     They didn't find a cell phone.

3     Q     They didn't find it. Now on September 13, you knew  
4     that they were interested in the fact that you had your cell  
5     phone because it was their position that that was in  
6     violation of your release conditions?

7     A     They were afraid it might have internet access but it  
8     didn't, I don't use internet on a phone. It wasn't a big  
9     deal, they were trying to make a big deal about it.

10    Q     It wasn't a big deal to you, but if there actually had  
11    been internet access on that phone and if they had been able  
12    to see that phone to verify that it did, might you have been  
13    in violation of your release conditions?

14    A     I guess.

15    Q     And isn't that why you didn't return for your trial  
16    date in October along with the fact that you --

17    A     It wasn't over a cell phone, no.

18    Q     And didn't you also not return for your trial date  
19    because you knew you were guilty of these charges?

20    A     No, I had work to do. I was called and -- my attorney  
21    called me in August and he said, the trial's not going to go  
22    through, the Canadians haven't provided the disclosure and he  
23    basically told me the case was over. And then a few weeks  
24    later he said, I need you to show up on September 13th. He  
25    didn't really say why, but --

1 Q How about October 18th? Your attorney advised you to  
2 show up on October 18th, right?

3 A He did not, because all of our correspondence went  
4 through the attorney in Geneva. I have new attorney  
5 paperwork to confirm that he sent me a notice to show up on  
6 the 13th of September and he was really expecting a stay in  
7 the proceedings because -- just gone too long, it was more  
8 than over twice the amount of time it should have been for me  
9 to have a trial and they still didn't have -- apparently they  
10 still didn't have the forensic report done.

11 Q Let's address that because you indicate it was more  
12 than twice the time to have a trial, that motion was actually  
13 denied, right, so the court found that there was nothing  
14 improper about the time that it took to bring your case  
15 before the court?

16 A Well, I --

17 Q Yes or no, sir, was it denied?

18 A It was denied.

19 Q And after it was denied, even though you'd been  
20 complaining about the length of the delay, you in fact  
21 yourself asked for an adjournment?

22 A No, I did not.

23 Q You didn't ask for an adjournment on October 18th?

24 A No.

25 Q You didn't make numerous attempts to try to get an

1 adjournment?

2 A Well, I don't remember what was going on, he just told  
3 me that -- he told me to show up on September 13th and that  
4 was it. We had work scheduled on October 18th, I was  
5 actually -- we were actually doing some work for an attorney  
6 from Syracuse, a real estate attorney had couple houses on  
7 Seneca Lake and we were putting backup generators in, that's  
8 what I remember. I remember when I got -- I think the  
9 attorney called me on October 18th and said that they denied  
10 your stay and issued a warrant for your arrest.

11 Q Sir, I'm approaching and handing you what's been now  
12 marked as Government's Exhibit Number 19, I'm going to ask  
13 you if you recognize this letter. Do you recognize that  
14 letter?

15 A Yes, looks like mine.

16 Q Was that letter actually --

17 A That's from my attorney.

18 Q Who's on the letterhead?

19 A It's Steven J. Edgley, it's addressed to me.

20 Q The attorney you've been referring to, and I'm going to  
21 retrieve the item from you, the attorney that you've been  
22 referring to is Steven J. Edgley, the attorney you've been  
23 talking about who was your barrister and solicitor  
24 representing you in Canada?

25 A I didn't hear the last --

1 Q Was he your attorney in Canada?

2 A Yes.

3 Q And did he write you a letter on October 20, 2010,  
4 indicating, "Dear Sir," addressed to you, "I am writing to  
5 confirm that I attended court in Brockville on your behalf on  
6 October 18, 2010. This was the date scheduled for  
7 continuation of your trial. Your name was paged both inside  
8 and outside the courtroom three times and you were not in  
9 attendance." Goes on to say, "You had instructed me to  
10 request an adjournment of the trial so that you could  
11 consider your options. I made the request. However, it was  
12 denied."

13 Do you recall getting that letter?

14 A Yes, it came over -- excuse me.

15 Q Did you receive the letter, sir, was this something  
16 that you received?

17 A Yes, I did.

18 Q But is it your testimony today that you were not trying  
19 to get the case continued?

20 A I don't remember how we left it, I had two attorneys I  
21 hired to work on and they told me to show up on the 13th, I  
22 showed up on the 13th, they never told me to show up after  
23 that.

24 Q Well, let's clarify that because I believe earlier you  
25 indicated they told you not to show up; do you remember



1 saying that, that your attorney told you not to show up?

2 A I don't know what was going on, the Canadians had  
3 things so screwed up, I really didn't know. I hired two  
4 attorneys to work on it, I was sent a notice to appear on the  
5 13th, they schedule the trial six months in advance, it was  
6 blocked off on my calendar, I showed up on the 13th.

7 Q I'm asking you, were you instructed by your lawyer  
8 Steven Edgley not to appear on October 18, 2010, as you  
9 testified earlier?

10 A Not to appear?

11 Q Right. Did your attorney tell you not to appear?

12 A I wasn't told to appear, I thought he was going to  
13 appear on my behalf. I was not told to show up on the 18th.  
14 He didn't -- on the 13th he said it's mandatory, I need your  
15 appearance and I didn't receive any such letter on the 18th.

16 Q We played a call in this courtroom today and I believe  
17 on the call it's between you and your mother; did you  
18 recognize the voices on the call?

19 A Yes.

20 Q That's you?

21 A Yes.

22 Q That's your mother?

23 A Yes.

24 Q And on the call, if we could play that, please.

25 (Telephone call played.)

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1 Q Now earlier in your testimony, it was suggested that we  
2 might not have heard everything. Do you recall that?

3 A You left out the part about the lawyer, the lawyer'd  
4 just been there.

5 Q Why don't we play what's after that.

6 (Telephone call played.)

7 Q Was that also you?

8 A Yes.

9 Q And you indicate on here that you've been telling  
10 people all along and nobody chooses to believe you, so when  
11 you've told people about this, no one believed you that it  
12 wasn't -- nobody believes you?

13 A I was going off the Canadian forensic report. I hadn't  
14 seen -- Jeff Parry put it in front of me and then disappeared  
15 and I was trying to get ahold of it. He put it in front of  
16 me and I just saw that, um, like I said, they only found -- I  
17 think they found something like five classified images as  
18 child pornography, that were deleted on the computer  
19 somewhere.

20 Q When you say nobody believed you, does that include  
21 your father?

22 A I don't remember what the "believe me" part was, but my  
23 parents were at that bail hearing and it was exactly what I  
24 said it was, you running your mouth that there were 3800  
25 pictures on there and that's not what the forensic report

1     said from Canada.

2     Q     When you say "you", are you referring to me?

3     A     I believe it was you, yes.

4     Q     So when you're saying, talking about a prosecutor  
5     talking about these images, you weren't referring to the  
6     Canadian process, you were referring to the American process?

7     A     I was referring to the Canadian -- well, the Canadian  
8     report's a bit different from what yours was. Quite night  
9     and day different.

10    Q     Why don't we talk about that because you've mentioned  
11    the Canadian report. You've mentioned that it's different,  
12    right?

13    A     It's very different.

14    Q     And are there some areas where the Canadians identified  
15    more child pornography than the Americans did?

16    A     Not that I'm aware of.

17    Q     Not that you're aware of? With regard to the  
18    4-gigabyte thumb drive, do you recall that?

19    A     I honestly didn't pay much attention to the thumb  
20    drives, I was only interested in what's on the computer, I  
21    don't know anything about the thumb drives.

22    Q     Well, that was asked on the examination of Agent  
23    Braisted, do you recall that, and you're indicating that  
24    these reports are wildly different, isn't that your  
25    testimony?

1 A Yes, they are.

2 Q Are you aware and were you present in the courtroom  
3 when Officer Wohlerlert indicated that he found 1,644 images of  
4 suspected child pornography but that he stopped because he  
5 hit a saturation point; do you recall that testimony?

6 A Yes, I recall from Canada, too.

7 Q Isn't it true, sir, that one of the reasons why the  
8 numbers are different is because they stopped looking, they  
9 had found enough images of child pornography?

10 A They failed to complete the investigation.

11 Q And that's the motion that you brought before the  
12 Canadian authorities and they denied it?

13 A Yeah, apparently they did.

14 Q By they, I mean the court system considered your  
15 motion, considered the arguments and denied them?

16 A Well --

17 Q Yes or no, sir, are you aware of whether the court  
18 denied the motion?

19 A Yes, I just read about it recently, but yes, they did.

20 Q Compaq computer, is that your computer?

21 A Yes.

22 Q Are you aware, sir, that part of the Canadian report  
23 found a video of child pornography on the Compaq computer?

24 A Yes, there was one in deleted space.

25 Q That's where they found it?

1 A Yes.

2 Q And when the Americans did the imaging, they didn't  
3 count that video, right?

4 A I don't know, it was my understanding it was returned  
5 and it wasn't working.

6 Q Well, sir, you have indicated that these reports are  
7 different somehow; isn't it true that one of the differences  
8 on the Compaq computer, they identified a video of child  
9 pornography?

10 A Apparently, that's what they said, that's what they  
11 said, if they did, they did.

12 Q In each of the other media that was analyzed, both  
13 reports indicate the presence of child pornography, isn't  
14 that correct?

15 A Which ones, the Canadian?

16 Q In all the other remaining media, the Canadian report  
17 and the American report, aside from the 2-gigabyte thumb  
18 drive, there's no testimony on that from either country,  
19 there was child pornography found on both, on the 8-gigabyte  
20 thumb drive, 4-gigabyte thumb drive, the Toshiba laptop, and  
21 the Compaq laptop?

22 A Again, I -- the thumb drives, I can't really comment  
23 on.

24 Q You can't really comment on it because of the presence  
25 of child pornography on there?

1 A I don't know anything about the thumb drives. They  
2 found adult pornography on the computers from the Canadian  
3 report, you didn't include that.

4 Q Is that not included, sir, because it's actually not  
5 child pornography, is that right?

6 A It would have been helpful, somebody looking for adult  
7 pornography might not always be interested in child  
8 pornography.

9 Q So you find fault with the American report that only  
10 categorized the images and videos of child pornography?

11 A Just that you've pulled out child pornography, yes.

12 Q They pulled out child pornography?

13 A Well, the Canadians had to do -- the Canadians, their  
14 process is different, they have to make full disclosure, so  
15 they have to report everything that's on there which  
16 includes, you know, personal pictures and everything else.

17 Q Isn't that true because part of their process includes  
18 classification, do you recall that testimony, that they  
19 actually take all of the images as part of their process and  
20 classify them, they classify them to category 1 and so on?

21 A Yes.

22 Q That their process --

23 A That Wohlert testified to that, at the September 13th,  
24 2010 hearing.

25 Q And do you also recall that part of his testimony was

1 that in that classification process where there are videos or  
2 images of a child who has attained puberty, they will  
3 classify that as adult pornography; do you recall that?

4 A Yes, I believe you just said that.

5 Q Now, you indicated on direct examination that you have  
6 people that work for you, right?

7 A Yes.

8 Q And these people, they have access to your e-mail?

9 A Yes.

10 Q They have -- did they have access to your Toshiba  
11 laptop?

12 A Yes, that was in the basement.

13 Q Was that --

14 A At one of the desks.

15 Q Was that part of a function of work, is that you had  
16 people that worked for you so as part of working for you,  
17 they would have access to your computers?

18 A Yes, it was, I testified to that. There's a few people  
19 that have access to the garage and they can access the  
20 basement.

21 Q Okay. And while we're talking about testimony, do you  
22 recall in September of 2010, appearing in the Brockville  
23 Courthouse in Brockville, Ontario?

24 A Yes.

25 Q And do you recall as part of the motion that you made

1 complaining of delay, that one of your bases of that  
2 complaint was how the delay had impacted you; do you recall  
3 giving testimony about that?

4 A Yes.

5 Q And do you recall when you gave testimony with regard  
6 to that you indicated that there were two people, two other  
7 employees that worked with you?

8 A Yes, that -- like I was explaining before, there's -- I  
9 take guys on when I need them, I don't really employ anybody  
10 full -- well, there are a couple of guys, one guy I keep on  
11 full time and then there's two others, I alternate, but they  
12 do have access to -- three people have full access.

13 Q Do you recall giving testimony that it was very  
14 difficult for you to keep functioning in your work because  
15 you had to hire somebody to do the computer work because you  
16 would normally do it yourself?

17 A Right.

18 Q You recall giving that testimony?

19 A Yes.

20 Q And so when you were asked about invoicing, accounting  
21 programs, and purchasing items and purchasing items on the  
22 internet, you indicated that that was a function that you  
23 performed?

24 A Yes.

25 Q And you indicated as part of your complaint of the case



1 not going as fast as you wanted it to go in Canada, that you  
2 actually had to hire somebody because ordinarily, no one  
3 would have that type of access to your computer to perform  
4 those functions for you?

5 A No, that's not true.

6 Q All right. Do you recall being asked -- do you recall  
7 being asked, and this is the Matter of Her Majesty The Queen  
8 and Joseph Jenkins, Ontario Court of Justice, and I'm  
9 referring to page 65.

10 MR. GOLDSMITH: Just a moment, your Honor.

11 Q Do you recall being asked this question, "And so, not  
12 being able to use, I'm sorry, possess or have any access to  
13 the computer or the internet, has that caused any problems  
14 for you in your work?" And do you recall giving the  
15 following answer: "Yeah, it's been very difficult. I've had  
16 to get somebody else to do what I would normally do, I've had  
17 to pay someone to do what I normally do myself." Do you  
18 recall that?

19 A Yes.

20 Q And that was your answer?

21 A Yes.

22 Q Was that under oath?

23 A Yes.

24 Q Same oath you took today?

25 A I believe so, yes.

1 Q And were you asked the question, "You've had to pay  
2 somebody else to do that type of work for you?" And giving  
3 the answer, "Yeah." Yes?

4 A Just switching jobs, it wasn't a big deal.

5 Q So, when you gave this testimony, it was your position  
6 then that parties that would be working for you, you  
7 identified two, they would not be accessing the internet on  
8 your behalf, they would not be accessing your computer to  
9 perform the functions of Jenkins Electric, isn't that true?

10 A No, I mean, like I said, there's people in and out, my  
11 house is like a shop, there's people in and out, they go  
12 there for materials, they go there and check the e-mail. If  
13 there's one guy that wants something to do, I say go check  
14 the house, check the fax machine, see if there's a work order  
15 there, we get work orders on --

16 Q So sir, is it your testimony that you actually don't  
17 have to hire anybody else to do that type of work?

18 A I -- I don't remember what I was -- in Canada. We mix  
19 and match, it's people's nature, they don't like to do  
20 physical work, I like to do physical work, I like to go out  
21 and climb around, you know, ceilings and dig ditches, other  
22 people don't like to do that so I try and delegate it. If  
23 somebody -- if somebody wants to do paperwork, if it's a  
24 basic estimate, you know, they could do it. I'd rather go  
25 out and work, I don't want to do paperwork.

1 Q I guess what I'm asking seems also mixed and matched.  
2 Do you have to hire someone else to do your invoicing,  
3 programming, and all the functions that you indicated  
4 September of 2010 when you cannot do it yourself?

5 A No, I don't have to hire anybody, I just have to --  
6 rather than pay them to go out and work, I pay them to work  
7 in the office, I don't remember really, what that testimony  
8 was about, but --

9 Q Well, do you remember if you told the truth or not?

10 A I always tell the truth, lady, I don't lie.

11 Q So which is it today?

12 MR. GOLDSMITH: Objection.

13 A I'm not lying, I didn't -- nothing to hide I've  
14 disclosed all my paperwork from Canada, attorneys' letters,  
15 transcripts. I'm not hiding anything, I'm up here  
16 testifying, what am I --

17 Q And during your testimony didn't you indicate that it  
18 was Agent Chad Willard who on September 13, 2010 subjected  
19 you to a two-hour delay and search that you were quite  
20 animated about; wasn't that your testimony today?

21 A Yeah, I remember him.

22 Q You remember Agent Chad Willard on September 13, 2010  
23 stopped you at the border?

24 A Yes.

25 Q And was that the time that they were looking for the

1 phone?

2 A He wasn't -- he didn't stop me, somebody else stopped  
3 me.

4 Q But he was present?

5 A I believe he was working the counter, yes.

6 Q And at all times they had indicated exactly what they  
7 were looking for, right, they were looking for this cell  
8 phone?

9 A Yes.

10 Q When you were approached in Canada, and you -- when you  
11 were asked if you downloaded child pornography, do you recall  
12 that you indicated, not to my knowledge?

13 A Yes, that was a true answer.

14 Q So the first time that anyone tells you and suggests to  
15 you that what they're looking at on your computer, your  
16 devices, is child pornography, and you're asked about it,  
17 your response was, not to my knowledge?

18 A Yes, it was.

19 Q You didn't say no, child pornography, are you kidding  
20 me? No, nothing like that?

21 A I just said -- you just asked me, have you -- whatever  
22 you said, said no, not to my knowledge. I mean what -- I  
23 didn't really think there was a more appropriate answer.

24 Q Do you recall sitting down with Marie-Josée Vinette,  
25 the female investigator, do you recall sitting down with her

1 and her asking you if you knew what child pornography was?

2 A I don't remember that, no.

3 Q Do you recall her telling you that she found child  
4 pornography on media devices in your truck and your reply  
5 was, you asked to speak to your parents?

6 A No, I don't remember that.

7 Q Well, how about this. Did you tell any of these  
8 Canadians, listen, there are other people that have access to  
9 my computers, I don't know, I don't know anything about it  
10 but there are lots of other people? Did you provide names of  
11 these other people?

12 A No, I was under arrest, why would I talk?

13 Q So what you did is you asked to call, telephone your  
14 parents?

15 A They were expecting me, I asked to use the phone, yeah,  
16 I didn't want them coming out looking for me late at night.

17 Q Do you recall the officers who did the search of your  
18 car before you were placed under arrest talking to you about  
19 child pornography, saying, hey, listen, we're seeing  
20 something here on the computer, do you remember that?

21 A They never said they saw child pornography on the  
22 computer.

23 Q Do you remember they talked to you about what was  
24 contained on your computer?

25 A No.

1 Q Do you remember being asked have you had child  
2 pornography on your computer before you were placed under  
3 arrest?

4 A I'm sorry, repeat that.

5 Q Do you remember being asked if you had child  
6 pornography on your computer before you were placed under  
7 arrest?

8 A Yes, I stated not to my knowledge or no, they -- I  
9 can't remember what they said, if you've ever downloaded or  
10 viewed it, whatever they said, I said no.

11 Q And at that time, did you say, there are other people  
12 that have access to my computer, it's not mine, I don't know  
13 anything about this, or did you express any alarm, concern,  
14 let them know where it came from or who had access to your  
15 computer?

16 A No, I wouldn't have acted like that, no.

17 Q You just indicated, not to my knowledge?

18 A That's what I said, there wasn't -- not to my  
19 knowledge, I wouldn't think anybody would do that.

20 Q Do you recall -- do you recall when you were in the  
21 Cayuga County Jail also having conversations with your  
22 father?

23 A I called him a couple times a week, got to be more  
24 specific.

25 Q How about May 7th, 2012, do you recall talking to your

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1 father?

2 A Not any specific conversation.

3 Q Do you recall talking to your father and your father  
4 telling you you shouldn't have had that crap on your  
5 computer?

6 A I -- no, I don't.

7 Q And if we were to play that call for you, would you  
8 recognize your father's voice?

9 A Yeah.

10 Q This would be off of Exhibit 10D.

11 (A telephone call on Government Exhibit  
12 No. 10D was played.)

13 A That was probably some argument over an attorney, I was  
14 getting, you know, these people, they just, they throw you in  
15 jail and you don't have any access to anything, and it's very  
16 frustrating, lose everything you have, you get bullied and --  
17 like to go over some of that correspondence with you --

18 Q Sir, I don't recall that question being before you. Is  
19 that your dad's voice on that call?

20 A Yes, we --

21 MS. THOMSON: I have nothing further.

22 THE COURT: Counsel, any redirect?

23 MR. GOLDSMITH: No, your Honor, I have no redirect.

24 THE COURT: Okay. Ladies and gentlemen, I'm going  
25 to excuse you for the day. I'm going to instruct you please

1 don't talk about it with anybody, if anybody approaches you,  
2 tries to talk to you about this case, I need to know about it  
3 immediately. Do not read, listen, view anything to do with  
4 this case, and please be in the jury room to get started at  
5 9:00, we'll see you then, okay. Have a good night, travel  
6 safe, please. I think it's supposed to be okay tomorrow.

7 (Jury Excused, 4:18 p.m.)

8 THE COURT: Okay. You may step down, sir. The  
9 record should reflect that the jury's left the room and the  
10 defendant is leaving the stand with the jury not being  
11 present in the courtroom. Can you give us an indication,  
12 Mr. Goldsmith, if you're going to call any other witnesses?

13 MR. GOLDSMITH: No other witnesses.

14 THE COURT: Defense is going to rest?

15 MR. GOLDSMITH: Defense will rest.

16 THE COURT: Okay. I will have you rest in front of  
17 the jury in the morning. Have either of you had an  
18 opportunity to review the charge? You've had an opportunity,  
19 it's been with you.

20 MR. GOLDSMITH: I've had some opportunity to  
21 review, yes.

22 THE COURT: Okay. So why don't we take a brief  
23 break in case anybody needs to use the facilities, and I want  
24 to try and do a charge conference before we break for the  
25 day, so that we're prepared for tomorrow morning, defense



1 will rest, we'll do our closing arguments, and I will charge  
2 the jury at the conclusion of the closing arguments. Okay.  
3 So about five, ten minutes.

4 MR. GOLDSMITH: Thank you.

5 THE COURT: All right.

6 THE CLERK: Court's in recess.

7 (Court in recess, 4:20 p.m. to 4:28 p.m..)

8 (Open Court.)

9 THE COURT: All right. The record should reflect  
10 we're in the courtroom without the jury, the jury's been  
11 excused for the day and we're going to do a charge conference  
12 with regard to the jury instructions to be given in this  
13 case.

14 Counsel, what I'd like to do is, I'll go through it  
15 by section, and you just indicate to me whether you have any  
16 requests or objections to particular charges in the sections  
17 as we go through. I'll start with the government and then,  
18 Mr. Goldsmith, I'll go to you on behalf of defendant, and I  
19 find that's probably the most efficient way to go through and  
20 if there's a section where you say, well, Judge, I object to  
21 this or I like that, we'll deal with it as we go through,  
22 okay. So I'm going to use the table of contents and then  
23 I'll flip to the section if there's a particular objection or  
24 a request.

25 Starting with the introduction section which

1 describes the roles of the court and the jury, the role of  
2 the attorneys, and the government as a party, are there any  
3 requests or objections to that section by the government?

4 MS. CARROLL: No requests or objections.

5 THE COURT: Okay. Mr. Goldsmith?

6 MR. GOLDSMITH: No requests nor objections.

7 THE COURT: Okay. Let's go to the nature of the  
8 evidence. It includes subsections, testimony and exhibits,  
9 direct and circumstantial evidence, indictment is not  
10 evidence, potential punishment is not evidence. For the  
11 government, any requests or objections?

12 MS. CARROLL: No requests, no objections.

13 THE COURT: Mr. Goldsmith?

14 MR. GOLDSMITH: No requests nor objections.

15 THE COURT: Okay. Let's go to evaluation of  
16 evidence. It's a larger section and I'll go through the  
17 subsections. Verdict based on evidence, not sympathy,  
18 improper considerations, race, religion, national origin, sex  
19 or age, quality not quantity of evidence, credibility of  
20 witnesses, testimony of law enforcement witnesses, pretrial  
21 statements of the defendant, testimony of the defendant, use  
22 of evidence obtained, expert testimony, transcript of audio  
23 recording, particular investigative techniques not required,  
24 and variance in dates immaterial. For the government, any  
25 requests or objections in that section?

1 MS. CARROLL: None, your Honor.

2 THE COURT: Mr. Goldsmith?

3 MR. GOLDSMITH: No objection, however, we would  
4 request a missing witness charge as to Detective Sergeant  
5 Michael Harrington out of the Ontario Province Police. This  
6 is the individual who was the Canadian forensic expert who  
7 performed the forensic studies on the computer that had been  
8 referred to in testimony by special agent, Detective Agent  
9 Braisted and by Mr. Jenkins today. I believe he qualifies,  
10 he was under the control -- or withdrawn. I believe he  
11 qualifies that there was not equal opportunity by the parties  
12 to reach out and call him as a witness in that all of the  
13 Canadian witnesses defendant did not have the opportunity to  
14 subpoena and the government chose not to call him. I think  
15 that his testimony would have been relevant as to his  
16 findings in that forensic evaluation and I believe that it  
17 could be properly inferred that some of the evidence that he  
18 could have discussed as part of his findings could have been  
19 deemed to be favorable to defense.

20 MS. CARROLL: Your Honor, in order to warrant  
21 missing witness instruction, the defendant has to make out  
22 the burden that the government is the cause of the witness'  
23 absence; the government did something to make the witness  
24 unavailable. As this court knows, that witness is in fact  
25 not within the subpoena power of this court or the United

1 States government and so it was by grace alone that the  
2 Canadians agreed to appear, grace and MLATs. The government  
3 has no ability to compel Detective Harrington's testimony or  
4 presence in this courtroom.

5 Beyond that, the government did nothing to make it  
6 impossible for Detective Harrington to appear. Detective  
7 Harrington, as the testimony in the trial established, is on  
8 long-term disability leave and is not currently working and  
9 is not actually on duty and available to even Canadian  
10 prosecutors at this point. He's out on disability leave and  
11 is unavailable for that reason, not because of anything the  
12 government did or caused to be done.

13 THE COURT: Okay, that request will be denied.  
14 Let's go to the section burden of proof. Any requests or  
15 objections by the government?

16 MS. CARROLL: None, your Honor.

17 THE COURT: Mr. Goldsmith?

18 MR. GOLDSMITH: None.

19 THE COURT: We're going to go to section 5 which is  
20 the substantive law, it has subsections of Count 1,  
21 transportation of child pornography which includes  
22 instructions on first, second, third, and fourth element,  
23 then it goes on to subsection B, Count 2, possession of child  
24 pornography and it gives first, second, third elements, and  
25 then venue requirement for both counts, and it ends with the

1 forfeiture allegation instruction. Any requests or  
2 objections from the government?

3 MS. CARROLL: One request, your Honor. On  
4 subsection 5B, actually 5, 5B, C, subsequent --

5 THE COURT: You're looking at subsection 5C, venue  
6 requirement for both counts.

7 MS. CARROLL: Yes.

8 THE COURT: On page 30.

9 MS. CARROLL: Yes. In the paragraph that begins,  
10 "You are instructed that the Northern District of New York  
11 includes, among other places, Syracuse, Binghamton, Oswego,  
12 Watertown, Plattsburgh, Albany, and Utica, New York. It also  
13 includes the counties and land running along St. Lawrence  
14 River. The government would just request the inclusion of  
15 the language, it also includes the counties and land running  
16 along St. Lawrence River, including Jefferson County, period.

17 THE COURT: Jefferson County. Okay. Anything  
18 else?

19 MS. CARROLL: That's it, your Honor.

20 THE COURT: Mr. Goldsmith, any requests or  
21 objections? And I'll ask you that first and then I'll ask  
22 you if you want to be heard on the government's request.

23 MR. GOLDSMITH: I do have a request under Section  
24 5A. Section 5A, page 25, it's under the fourth element,  
25 knowledge. There is an instruction that allows for evidence

1 of flight to be inferred for consciousness of guilt. I  
2 don't -- obviously there was testimony in this trial about  
3 the defendant's flight from Canada, but not flight from  
4 authorities in the United States. I think that could be  
5 confusing for the jurors to try and weigh whether that was  
6 appropriately admissible toward consciousness of guilt  
7 because, again, we had all this testimony about him not  
8 returning to Canada, but there was nothing discussed about  
9 him attempting to flee at any point the United States, in  
10 fact a lull, I just think it's going to confuse them and I  
11 request it be stricken.

12 THE COURT: I'm not following your argument.  
13 Consciousness of guilt charge is with regard to him not  
14 returning to Canada for his trial, so, and that testimony is  
15 clearly in the record, I don't think you dispute that.

16 MR. GOLDSMITH: No, I'm not disputing that. I just  
17 think that between the different -- between the discussions  
18 held about him failing to appear in Canada, but there's no  
19 evidence in the United States, typically this instruction is  
20 used when the defendant attempts to flee from prosecution of  
21 the indicted offense in the jurisdiction and I think it's  
22 going to be confusing on the part of the jurors.

23 THE COURT: You want to be heard?

24 MS. CARROLL: Yes, your Honor. It's actually not  
25 the case that it has to be the same set of charges from which

1 the defendant flees that gives rise to the consciousness of  
2 guilt instruction. An example would be if an officer is  
3 about to arrest someone for burglary and they run from the  
4 officer and that person is ultimately indicted on larceny and  
5 not burglary but it's the same operative set of facts, a  
6 consciousness of guilt instruction would still be warranted.  
7 What we're talking about here is flight based on the same  
8 operative set of facts. Whether the prosecutorial authority  
9 is Canadian or United States makes no difference, we're  
10 talking about a defendant fleeing a jurisdiction because he  
11 was conscious of his guilt of the conduct of which he was  
12 accused. And the same operative set of facts form the basis  
13 for the Canadian charges as form the basis for the U.S.  
14 charges.

15 THE COURT: And the only thing we're saying with  
16 the instruction is that the jury can consider that if they  
17 find facts which they deem credible that establish that fact  
18 and how they should consider it should they find such facts.  
19 So yeah, I don't see that it would be confusing. I think  
20 it's clear from the record, it's whether the jury chooses to  
21 accept or reject that testimony as being credible. The  
22 defendant has testified and given his reasons for not showing  
23 up in Canada, which the jury can choose to accept or reject  
24 and also, you know, obviously the government has the right  
25 and I believe based on the evidence to make the argument that

1 the reason he didn't return was because of a consciousness of  
2 guilt and fear of prosecution.

3 So I think it's appropriate, I don't think it's  
4 confusion -- confusing, I'm going to deny the request and  
5 it's going to be charged. Anything else, requests or  
6 objections? And then if you'd like to address the  
7 government's request that Jefferson County be included in the  
8 venue.

9 MR. GOLDSMITH: Well, I'll just say I have no  
10 objection to the inclusion of Jefferson County.

11 THE COURT: And I'll tell you I'm inclined to do  
12 it, I think it's appropriate. That's what the indictment  
13 alleges and certainly to point out to the ladies and  
14 gentlemen of the jury in that venue area, that Jefferson  
15 County is part of the Northern District of New York is  
16 completely appropriate, so we're going to add that.

17 MR. GOLDSMITH: All right. Further in the section  
18 under subsection D of the forfeiture allegation.

19 THE COURT: Yes, sir.

20 MR. GOLDSMITH: The first paragraph on page 31 says  
21 if you found defendant guilty of the offense, I think it  
22 should be, of the offense charged in Count 1 and/or the  
23 offense charged in Count 2 of the indictment, you will need  
24 to consider a further question. In the pretrial conference,  
25 we had discussed whether there was going to be a bifurcated



1 hearing as to the forfeiture counts. I had indicated to the  
2 court that it is my experience that a forfeiture hearing is  
3 something that I would request under the circumstances, and  
4 it's also something that in my experience I've experienced in  
5 prior trials where forfeiture is an allegation. Based upon  
6 the language, and also based upon the proposed verdict form  
7 being inclusive of both, the substantive as well as the  
8 forfeiture counts, is it the court's intention to hold a  
9 separate forfeiture hearing or to have the jury deliberate at  
10 the time for everything together?

11 THE COURT: It was my intention to have them  
12 deliberate together, my recollection of the pretrial was  
13 that's what you requested. You did not?

14 MR. GOLDSMITH: No, I said it was usually my  
15 practice, that in my experience that we had actually  
16 litigated it fully.

17 THE COURT: Hold on a second. Okay. Go ahead, I'm  
18 sorry to interrupt.

19 MR. GOLDSMITH: No, I'm --

20 THE COURT: You're done?

21 MR. GOLDSMITH: I'm done as far as that particular  
22 request.

23 THE COURT: Government want to be heard?

24 MS. CARROLL: Really it's of no significance one  
25 way or the other to the government. I suppose, you know, for

1 the sake of the jury, it might be nice for them to be able to  
2 reach both the forfeiture allegation and the substantive  
3 counts during the same deliberative process, but I'm happy to  
4 defer to the defendant's request. It would be the  
5 government's intention simply to refer the jury to the  
6 evidence they heard at trial and not to put on any additional  
7 witnesses or testimony of any kind.

8 THE COURT: So that would be the nature of your --  
9 of a hearing, you would just request to make a statement or  
10 an argument to the jury?

11 MS. CARROLL: Yeah, we would just offer, basically  
12 give a proffer to the jury.

13 MR. GOLDSMITH: If that's the nature of their  
14 hearing, then that's their decision to conduct the hearing if  
15 we get there, so --

16 THE COURT: Okay. But what you're saying is on  
17 behalf of your client, you prefer to have --

18 MR. GOLDSMITH: I would prefer that it be  
19 bifurcated and accordingly that the verdict form --

20 THE COURT: Be changed. Separate and changed and  
21 move this instruction and unless and until they find him  
22 guilty of Count 1 or Count 2 --

23 MR. GOLDSMITH: I think so, yeah. Or I also, I  
24 mean I think that the court can charge the forfeiture as long  
25 as it's -- as long as there's definitive language after the

1 comma where it says, where it has the conditional language,  
2 if you have found the defendant guilty of either of those  
3 offenses, then perhaps substituting some language instead of  
4 you will need to consider, how about you will be asked to go  
5 back and consider or separately consider, something of that  
6 nature so that the court doesn't have to then issue a  
7 separate forfeiture instruction prior to the forfeiture  
8 hearing.

9 (A discussion was held off the record between  
10 The Court and the law clerk.)

11 THE COURT: Well, Mr. Goldsmith, if you're  
12 requesting that it be bifurcated on Mr. Jenkins' behalf, we  
13 can certainly do that. We won't include this language, and  
14 you know, we can hold a separate hearing when and if there is  
15 a guilty verdict on either of the first two counts and that's  
16 what we'll do.

17 MR. GOLDSMITH: Thank you.

18 THE COURT: The government has the burden, I would  
19 say, I'm not a hundred percent convinced of what you need to  
20 do in that hearing but I'm sure you can establish what you  
21 need to do as far as your burden goes regarding the  
22 forfeiture and we'll deal with it in that manner. Okay.

23 MR. GOLDSMITH: Okay, thank you. And will the  
24 court be segregating the verdict form?

25 THE COURT: Yes.

1 MR. GOLDSMITH: Thank you. And then finally on  
2 page 32, same section under forfeiture, the large paragraph  
3 in the second, or the bottom half refers to controlled  
4 substances. Middle sentence, includes but is not limited to  
5 property that was used or intended to be used to purchase,  
6 manufacture, transport, store, conceal, or protect controlled  
7 substances --

8 THE COURT: Yeah, that's --

9 MR. GOLDSMITH: -- used in the offense.

10 THE COURT: That shouldn't be in there, obviously.

11 MS. CARROLL: No objection, your Honor, if you want  
12 to change it to contraband, I think that would do the trick.

13 THE COURT: That's what we'll do. Anything else?

14 MR. GOLDSMITH: Nothing further.

15 THE COURT: Okay. There's only I believe one  
16 section left and that's the conclusion. Any requests or  
17 objections in that legal instruction for the government?

18 MS. CARROLL: None, your Honor.

19 MR. GOLDSMITH: None, your Honor.

20 THE COURT: Very well. The appropriate revisions  
21 will be made and you'll be provided with a new copy of the  
22 charge with these changes will be placed on your counsel  
23 table in the morning. Okay?

24 MS. CARROLL: Thank you, your Honor.

25 THE COURT: Anything further for the government?

1 MS. CARROLL: Nothing.

2 THE COURT: Mr. Goldsmith?

3 MR. GOLDSMITH: Nothing.

4 THE COURT: Okay, we'll see you in the morning,  
5 9:00.

6 THE CLERK: Court's in recess.

7 (Court Adjourned, 4:47 p.m.)

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